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YOUNG PEOPLE IN THE COURTS of New York State



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YOUNG PEOPLE IN THE COURTS
OF NEW YORK STATE

New York (State) Legislature.
" Children's Court. Jurisdiction
and Juvenile Delinquency Committee

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Report TO THE HONORABLE

LEGISLATURE OF THE STATE OF NEW YORK (3164)

OF THE JOINT LEGISLATIVE COMMITTEE TO

EXAMINE INTO, INVESTIGATE AND STUDY THE

EXISTING FACILITIES FOR THE CARE AND

TREATMENT OF CHILDREN now coming under the

Jurisdiction of the Children's Courts, and of Minors 16 to

18 years of age now coming under the Jurisdiction of the

Adult Courts, and of the advisability of changes in the

present method of handling cases of Minors 16 to 18

years of age, either by extension of the Jurisdiction of the

Children's Courts or by some other method.

Albany, New York

April, 1942

1561

N.Y. (State) Legis. Children's court &
juvenile delinq. comm.

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Designed by Robert Josephy

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Foreword

TO THE HONORABLE LEGISLATURE OF THE STATE OF NEW YORK:

The following report is submitted pursuant to the following resolution introduced in the Senate and Assembly of the State of New York and adopted March 28, 1941, continuing a Joint Legislative Committee to investigate Children's Court Jurisdiction, known as Children's Court Jurisdiction and Juvenile Delinquency Committee:

WHEREAS, The Legislature, by joint resolution adopted May 7, 1937, created a Joint Legislative Committee known as Children's Court Jurisdiction and Juvenile Delinquency Committee, to examine into, investigate and study the existing facilities, public and private for the care and treatment of children coming under the jurisdiction of children's court and of minors sixteen to eighteen years of age coming under the jurisdiction of the adult courts, and the advisability of changing the method of handling cases of minors sixteen to eighteen years of age either by extension of the jurisdiction of the children's court or by some other method; and

WHEREAS, The powers and duties of such committee were continued and the time for filing its final report was extended from time to time, the last continuation and extension having been to March 1, 1941, by resolution adopted March 26, 1940; and

WHEREAS, Such committee has made report of its labors from time to time; and

WHEREAS, Additional time and study are necessary to make it possible for such committee to pursue its inquiry and examination into features of its subject matter which it has been unable to explore in sufficient detail heretofore; now, therefore, be it

RESOLVED (if the Assembly concur), That such Joint Legislative Committee, hereinbefore referred to and described, be and the same is revived, renewed and further continued with all its powers and duties as heretofore existing and provided for; and be it further

RESOLVED (if the Assembly concur), That such committee make report to the Legislature on or before March 1, 1942, concerning the results of its further investigations, and submit such proposals as may be necessary to carry its recommendations into effect; and be it further

RESOLVED (if the Assembly concur), That the expenses of such committee, both those heretofore accrued and unpaid, if any, and those hereafter accruing, not exceeding (\$20,000.00) twenty thousand dollars, shall be payable from the legislative contingent fund on vouchers approved and audited as provided by law.

Pursuant to said resolution of said committee, the latter was organized as follows:

Senator Fred A. Young, *Chairman*
Assemblyman George B. Parsons, *Vice-Chairman*
Senator Daniel Gutman, *Secretary*
Senator William F. Condon
Assemblyman Leo Lawrence
Assemblyman Abraham Schulman

Thereafter, Hon. Donald L. Brush was chosen Counsel, and Benedict S. Alper Research Director. A clerical staff was also appointed.

During the year 1941, hearings were held at:

Queens County on January 9th

Kings County on January 10th

Erie County on June 26th and 27th

at which the following named persons appeared or testified before the Committee:

At Queens County:—

MRS. SMITH ALFORD, Executive Secretary of the Child Service League,

J. O. ARROLL, Central Queens Y.M.C.A.,

LIEUT. THOMAS V. BURKE, Juvenile Aid Bureau, New York City Police Department,

HON. CHARLES S. COLDEN, County Judge of Queens County, .

JOSEPH M. CONROY, Queens County Bar Association,

HON. JOHN C. DONOVAN, Former Magistrate of the City of New York,

REV. PETER FOX, Brooklyn and Queens Catholic Charities,

HON. WILLIAM B. GROAT, JR., Counsel to the Ives Committee,

HIRAM S. HALL, Queens Chamber of Commerce,

HON. JENKIN R. HOCKERT, City Magistrate of the City of New York,

HON. PETER M. HORN, City Magistrate of the City of New York,

DEPUTY CHIEF INSPECTOR JOHN L. LAGARENE,

JACOB R. LEVY, Probation Officer, Felony Court, Queens County,

DEPUTY CHIEF INSPECTOR HARRY LOBDELL, New York City Police Department,

ANDREW MAGILL, Pastor First Presbyterian Church, Jamaica,

RABBI WILLIAM MALEV, Jamaica Jewish Center,

REV. WALTER MASIULIS, Brooklyn and Queens Catholic Charities,

MARY MORAN, President of the Queens County Women's Bar Association,

RT. REV. JEROME REDDY, Catholic Charities,

HON. ANTHONY P. SAVARESE, City Magistrate of the City of New York,

PATRICK J. SHELLY, Chief Probation Officer Magistrate's Court,

LIEUT. JAMES SLOANE, Main Office Detective Bureau, Queens,

HON. HENRY A. SOFFER, City Magistrate of the City of New York,
HON. CHARLES SULLIVAN, District Attorney of Queens County,
MRS. CLARIBEL WIKEL, Queensboro Federation of Mothers' Clubs,
MRS. WEBSTER WILLIAMS, Queens Y.W.C.A.,
RALPH L. YOCON, Flushing Y.M.C.A.,

At Kings County:—

HON. WILLIAM R. BAYES, Court of Special Sessions,
HON. JEANNETTE BRILL, City Magistrate,
HON. JOSEPH C. H. FLYNN, City Magistrate,
FREDERICK C. HELBING, Superintendent of New York State Vocational School,
HON. JAMES V. MANGANO, Sheriff of Kings County,
HON. WILLIAM O'DWYER, District Attorney of Kings County,
HON. NICHOLAS H. PINTO, City Magistrate,
REV. EDWARD E. SWANSTROM, Associate Director Catholic Charities Diocese of Brooklyn,
GEORGE H. TRUMPLER, representing the Kings County Grand Jurors Association,

At Erie County:—

SAMUEL C. ALESSI, Corporation Counsel of Jamestown,
HON. ORLA E. BLACK, County Judge and Children's Court Judge of Cattaraugus County,
BROTHER WOZNIAK BOLES LAUS, Catholic Aid Society of Buffalo,
EUNICE H. CARTER, Assistant District Attorney, New York County,
MARGUERITE GANE, Executive Secretary of Children's Aid Society,
JONAS H. HOLLANDS, General Secretary of Niagara Falls Children's Aid Society,
JOHN H. HOLLENBECK, Clerk of Children's Court and Probation Officer, Chautauqua County,
HON. WARD M. HOPKINS, County Court Judge and Surrogate, Allegany County,
SUZANNE V. KUBIAK, Supervisor of Lackawanna Center of Catholic Charities of Buffalo,
CARLOS C. LACY, Commissioner of Public Welfare, City of Niagara Falls,

JOHN B. MILLER, Counsel for Children's Aid Society of Buffalo,
HON. WILLIAM H. MUNSON, County Court Judge and Surrogate,
Orleans County,
HERBERT L. O'HARE, Representing the Commissioner of Social
Welfare of Buffalo,
HON. LEE L. OTTAWAY, Judge of County Court, Chautauqua
County and President of Association of Juvenile Court
Judges of America,
TIMOTHY W. REGAN, Chief Probation Officer of City Court of
Buffalo,
JOHN P. SHERRARD, Principal of School 44, Buffalo; member of
New York State Teachers' Association,
WINIFRED C. STANLEY, Assistant District Attorney of Erie County,
EDWARD P. VOLZ, Chief Probation Officer of Erie County,
JANE E. WRIEDEN, Salvation Army, Buffalo,
HON. VICTOR B. WYLEGALA, Judge of County Court, Erie County.

The Committee wishes to thank Mr. Benedict S. Alper, Research Director to the Committee, for the research and writing of this report. Mr. Alper thanks his assistants—Dr. Frederick A. Hoefer for help in connection with some of the research, and Edmond Schlesinger for gathering material on adolescence.

The Committee wishes also to express its gratitude to Hon. Donald L. Brush, Counsel to the Committee, who has ably guided the Committee in its legal work and has helped to draft the proposals for submission of our recommendations to the Legislature.

SIGNED: *Fred A. Young*, CHAIRMAN
George B. Parsons, VICE-CHAIRMAN
Francis J. McCaffrey, SECRETARY
William F. Condon
Leo A. Lawrence
Edgar F. Moran
Abraham Schulman

PART ONE

CHAPTER I. INTRODUCTION

The report which follows is the fifth by the Joint Legislative Committee to investigate Children's Court Jurisdiction, which Committee was originally created by a joint resolution of the Senate and Assembly of the State of New York, adopted May 7, 1937.

Four previous reports have been submitted to the Legislature of the State of New York, and respectively published as:

Legislative Document No. 69 of 1938

Legislative Document No. 75 of 1939

Legislative Document No. 62 of 1940

Legislative Document No. 56 of 1941

These early reports helped to present the background and to set out the problem. The report which follows will summarize the discussions and findings of the previous five years, and bring to definite conclusion certain findings and recommendations arising from the deliberations of this Committee during this period.

The broad questions confronting the Committee when it began its work included the following:

What is the extent of the problem of delinquency and crime among minors?

How should the State deal with juvenile and adolescent offenders?

How effectively do existing public and private agencies treat the problem?

What is wrong with these present methods?

What should be done to improve these methods?

These questions resolved themselves into two specific tasks:

Determination of the advisability of raising beyond sixteen years the upper age limit of jurisdiction of the children's courts of the State;

Consideration of the steps which should be taken by the Legislature of the State of New York in order that the older adolescent offender who is beyond children's court age may be dealt with more effectively by the courts, institutions and agencies of this State.

Throughout its deliberations, the Committee has been well aware of the indivisibility of the problem of juvenile delinquency and youthful criminality. The boy or girl of twelve or thirteen years of age who is brought before the children's court has, in the majority of instances, committed earlier offenses for which he may not have been apprehended. Similarly, the appearance in court of the older teen-age offender, from sixteen to twenty-one, usually climaxes a career in which unofficial acts of delinquency, or even earlier children's court appearances, are not unknown. To carry the problem further, even though beyond the limits of our present inquiry, the criminal career of the confirmed recidivist, the "cheval de retour" who shuttles back and forth between the community and the penal institutions of the State, had its beginnings, in a discouragingly high percentage of cases, in the formative years of childhood.

Our studies, therefore, covered the entire gamut of the problem of crime, and the recommendations which were made to us ranged from the nursery schools to the state penitentiary. We have, however, confined our attention to two major considerations—that relating to an increase in the age jurisdiction of the children's court, and that relating to the problem of the adolescent offender.

Certain other considerations were presented to us moreover, which, while not precisely germane to our inquiries, could not be excluded from this report: the responsibility of the schools, the

INTRODUCTION

contribution of probation, the effectiveness of our reform and correctional institutions—all these were considered by the Committee, and our opinions regarding them are set out below.

Throughout its deliberations and in its conclusions, the Committee has adhered to a principle which it considers to be vital in legislation for children—that the actions of conscientious and well-meaning parents shall not be interfered with, while at the same time making sure that children in need of special attention through lack of proper parental care and guidance or through other adult contribution to delinquency or neglect—shall be given the best protection the state can afford them.

In the course of the Committee's work, bills were drafted and presented to the Legislature for its approval. Certain of these bills were enacted, certain others failed of passage by reason of veto by the Governor, or otherwise. We believe that a review of our efforts of the past five years would not be complete without some consideration of these legislative efforts, and they are, therefore, included in Part Four. Certain other legislative proposals, newly drafted and proposed, which the Committee feels should be passed in order to implement its conclusions, will be found in chapters 4 and 8.

We wish to extend our thanks at this time to the large number of persons who have given generously of their time and thought that the Committee might be expertly advised. The contributions of some of these persons have been acknowledged by name in this and in previous reports of the Committee. To all those others who by correspondence, by memoranda submitted to the Committee, and in other ways, have aided us in arriving at our conclusions, we wish to express our gratitude.

The matter of delinquency and crime—their cause, treatment and prevention—has been much to the fore in public discussions of the past decade. The formation of this Committee is but one example of that interest. Through its five years of work, the Committee believes it has not only helped to keep this important problem before the citizens of the State, but has also helped to give that interest an intelligent and progressive direction.

We have been constantly mindful not only of our responsibility to the citizens of our own State, but also of the pre-eminent position which New York has always occupied in the field of social legislation. By setting the standard high for the care and protection of our own children, we help to raise these standards for children elsewhere. By improvement in our measures of social reform, we encourage the adoption of progressive methods for dealing with American childhood and youth generally.

"There can be no finality in the conclusions reached as to the State's provisions for children. Change in social conditions, fuller studies, advanced standards are bound from time to time, as in all the past, to bring new demands and lend new support for such as are now made. The door to progress is not to be closed."

CHAPTER **II.** SUMMARY OF

RECOMMENDATIONS

The major recommendations of the Committee are here summarized. These are discussed in detail in later pages of this report; the draft act as well as the findings and opinions of the Committee on each subject will be found in the chapter devoted to it.

As to the Children's Court

1. The Committee recommends that the age jurisdiction of the children's court be maintained at its present level of sixteen years. (See chapter 3, last section).
2. The Committee recommends that the State-wide Children's Court Act, that part of the Domestic Relations Court Act of New York City which refers to the Children's Court, and the special Children's Court Acts of Monroe, Ontario, Chautauqua and Onondaga Counties, be brought into complete uniformity with one another. (See chapter 4).
3. The Committee recommends that provision be made to empower judges of the children's court to deal informally with certain cases. (See chapter 11, pp. 238-245).
4. The Committee recommends that the children's court be given additional authority to determine the conditions of probation for adults and children who come before it. (See chapter 11, pp. 245-249).

5. The Committee recommends that the children's court outside of New York City be given the same jurisdiction in non-support actions, as is now granted to the Domestic Relations Court of New York City. (See chapter 11, pp. 249-266).
6. The Committee recommends that the Children's Court Act be amended in the matter of filling vacancies in the office of children's court judges. (See chapter 11, pp. 267, 268).
7. The Committee recommends that the New York City Domestic Relations Court Act be amended so as to provide counsel for the petitioner and the court in trial and appellate proceedings. (See chapter 11, pp. 268-270).
8. The Committee recommends that the children's courts be empowered to give some consideration to the preparation for the return of a child to its own home, after placement or commitment. (See chapter 11, pp. 271-275).

As to the Youthful Offender

9. The Committee recommends that there be established for youthful offenders between the ages of sixteen to nineteen in each of the five counties in New York City a division of the Domestic Relations Court of that City, to be known as the Youth Court. (A draft act embodying this recommendation will be found in chapter 8, p. 161; an analysis of the act on pp. 175-185 of the same chapter).
10. The Committee recommends that for the other counties of the State, the children's court judge or judges and the board of supervisors of each county be allowed to certify to the Secretary of State that the number of adolescent offenders between the ages of sixteen and nineteen is sufficient to merit the establishment of a Youth Court as a separate part of the children's court, under the same procedure as has been drawn up for the Youth Court in the Domestic Relations Court of New York City. (A draft act embodying this recommendation will be found in chapter 8, pp. 186-200; an analysis of the act on pp. 200-201 of the same chapter).

As to Certain Other Proposals Placed Before It

11. The Committee recommends that a state-wide system of youth courts or minor's courts not be created at this time. (See chapter 12, pp. 279-280).
12. The Committee recommends that further consideration be given to the Youth Correction Authority Act of the American Law Institute. (See chapter 12, pp. 284-290).
13. The Committee recommends that the Youth Court Act of the American Law Institute not be adopted by the State of New York even though certain features of it are included in the draft acts submitted by this Committee relative to the establishment of Youth Courts. (See chapter 12, pp. 290-294).
14. The Committee recommends that there be set up in the Executive Department a division of crime prevention either as a bureau of a state-wide Youth Service Council or as an independent agency. (See chapter 12, pp. 280-284).
15. The Committee recommends that further consideration be given to the English System of Borstal Institutions for youthful offenders, with a view to the adoption of certain features of this System in the public and private training and correctional institutions for minors in this State. (See chapter 12, pp. 294-304).
16. The Committee recommends that a Committee be created by joint legislative resolution to study the institutions to which the children's courts and the criminal courts of the State now commit less than adult offenders. (See chapter 13.)

PART TWO

CHAPTER **III.** JUVENILE DELINQUENCY

AND THE CHILDREN'S COURT

Early Concern with the Problem

In the consideration of any social problem, it is always well to cast at least a short glance backward before setting out on an appraisal of what is now, or what should be in the future. The Committee is aware that it is not the first investigative body created in New York State for the study of the extremely complex problem of the juvenile offender. We trace here a brief review of the historical background of the present courts for children, with attention first to the question of how juvenile delinquency and crime appeared to our predecessors among committees of inquiry and the conclusions which these groups arrived at as a result of their studies.

The first discoverable public report on this problem was made in 1818 by Mayor Colden to the Common Council of the City of New York. It will be noted that his attention was attracted to the evils of institutional commitment:

"The Mayor begs leave also to present for the consideration of the Board, the situation of those young persons who are sentenced to confinement in the Penitentiary. There are now there eleven boys under eighteen: several are under fourteen. They are shut up in cells with other convicts. It must be obvious that under such circumstances it would be in vain to expect that their punishment will improve their morals: it can hardly fail to have a contrary effect. It is presumed that some system might be adopted which would separate the aged from the young, and at the same

time afford the latter employment and instruction. This might extend to both sexes and be a means of benefiting and perhaps reclaiming many young females, a great number of whom are at all times confined within the walls of the Penitentiary"

In the same year a private philanthropic group of which Mayor Colden was a prominent member—the Society for the Prevention of Pauperism—began a systematic investigation into the conditions of juvenile prisoners in the adult jails of New York City. Reporting on conditions at Bellevue Prison, the Society commented: "Here is one great school of vice and desperation; with confirmed and unrepentant criminals we place these novices in guilt—these unfortunate children from 10 to 14 years of age, who from neglect of parents, from idleness or misfortune, have been doomed to the penitentiary by condemnation of law".

The aim of the group was to establish an institution which would separate the young offender from the adult criminal. Their inquiries led to the courts, and in 1824 for the first time, we note that it is the court process, as well as the institution, which comes under scrutiny. For that year, the District Attorney of New York City supplied the following figures: that the police magistrates alone sentenced more than 450 persons under twenty-five years of age as disorderly persons and vagrants, including a considerable number of boys and girls between the ages of nine and sixteen, that furthermore the "Court of Sessions" tried more than sixty children for petty theft, while several others were found to have committed more serious crimes.

During the following year the Society changed its name—"For the Reformation of Juvenile Delinquents", but continued to press for its original purpose: the establishment of a separate institution for juveniles.

Beginning with the New York Law of 1824, commitments to Houses of Refuge and similar institutions for youthful offenders were not sentences of imprisonment but commitments for custody and for education. The idea of punishment was for the first time eliminated—at least from the statute book—and its place was taken by notions of treatment and training. This was true also for the New York Juvenile Asylum which received homeless and destitute children as well as delinquents.

JUVENILE DELINQUENCY

As a consequence of this new attitude in the law, commitments were made not for a definite length of time but usually for minority. Institutional authorities were authorized by law to "bind out" their charges as soon as they were considered fit. Known as "indenture", this procedure was employed in very many cases. (It is at present still in operation in the Massachusetts Reformatory for Women.) These early concepts anticipated the practice of commitment instead of sentence in the case of juveniles, as well as the indeterminate sentence and even parole. The juvenile process may well be credited with these progressive innovations, some of which eventually found their way into the procedure for dealing with the adult offender.

Juvenile delinquency was again investigated in New York City in 1850 when the Chief of Police reported to the Mayor on the "Constantly increasing numbers of vagrant, idle and vicious children of both sexes who infest our public thoroughfares, hotels, docks, etc. . .". The Police Chief estimated that 2,955 such children were at large in only twelve out of the twenty patrol precincts of the City. The report classified these children in five groups:

1. about 770 children engaged in petty thievery, stealing from piers and docks;
2. some 100 children, mainly small girls are vagrants and beggars;
3. approximately 380 female prostitutes of child age;
4. 120 boys known as "baggage smashers"—homeless vagrants and thieves;
5. between 1600 and 1700 boys belonging to street corner gangs.

Neglect and criminal exploitation by parents and other adults, lack of a home and failure to attend school were cited as important factors in the creation of these conditions.

Experimentation with educational methods of institutional treatment of youthful offenders was the immediate outcome of these investigations. Because attention was at first focused chiefly on the atrocious conditions in jails and penitentiaries where children were thrown in with experienced convicts and prostitutes,

the primary aim was to segregate selected groups of delinquents in special institutions. The first institution of this type anywhere in America was the New York House of Refuge, established in 1825. Except for a \$2000 appropriation from the State, it was privately maintained. Within three years it was followed by like institutions in Massachusetts and Pennsylvania.

Concern over the conditions revealed by the 1850 report was followed by the establishment of the New York Juvenile Asylum, a private institution for homeless, destitute, and delinquent children which later developed into the well known Children's Village at Dobbs Ferry.

These reforms, however, were limited almost entirely to the field of institutional treatment and after-care. No substantial change was made in the organization and procedure of criminal courts, nor in the detention of juvenile offenders awaiting trial. It remained so in our State until the last quarter of the nineteenth century.

In 1877, the New York State Legislature passed a law prohibiting the placing of any child under sixteen "in any prison or place of confinement, or in any court-room or in any vehicle in company with adults charged or convicted with crime, except in the presence of proper officers". (Laws of 1877, chapter 428.) The first steps to be taken in the direction of probation supervision are found in 1884 with the passage of a statute providing that when a person under the age of sixteen was convicted of a crime, he might be committed to the care of any suitable person or institution, in lieu of being fined or sentenced to imprisonment. (Chapter 46, section 713.) A new section added to the Penal Code in 1892, allowed children under sixteen years of age to be tried separately, with a special docket and record to be kept for these cases. (Chapter 217.) The Greater New York City Charter of 1898 provided for a separate children's court within the system of Magistrate's Courts (section 1399), but this provision was never implemented in practice.

These are the earliest discoverable precedents for our present children's courts. In 1899, in Cook County, Illinois, appeared the first juvenile court, with separate personnel, though technically

it remained a division of the circuit court with one judge assigned to sit exclusively in juvenile cases.

Development of the Children's Court

In our State the probation law of 1901 gave to the courts a new instrument for the socialized treatment of criminal cases, by providing that persons over sixteen years of age might—in the discretion of the court—be placed on probation. The law made a further provision regarding persons under the age of sixteen in the City of Buffalo, but in order to secure its passage, the proponents of this measure agreed that the probation term be limited to three months in the cases of children.

The influence of this law upon the procedure in children's cases was immediately evident. It was to take effect on September 1, 1901, but in July of that same year, we find the first beginnings of a juvenile court procedure. "In Buffalo the Probation Law provides for no children's court, but by voluntary arrangement, Judge Murphy of the police court, before whom practically all the juvenile delinquency cases come up for trial, has transferred his juvenile cases to the room of the county agent for destitute children, several blocks distant from the police court, where he holds his juvenile court two afternoons in the week". (Proceedings of New York State Conference on Charities and Correction, Albany, 1902, p. 285.)

Six important principles guided this pioneer tribunal, according to its first judge: separate sessions for children, in a separate building; avoidance of jail detention through the use of bail, or by paroling the child to his home; attendance of probation officers at the session; exclusion of the public; ban on newspaper publicity; the use of probation as the "keystone of the court".

In 1902, the first Children's Court was established by law for Manhattan, as a branch of the Court of Special Sessions. In the following year a division of the court was constituted for Brooklyn, followed by Queens and Richmond in 1910. Two years later, four justices of Special Sessions were assigned to sit in the Children's Court, one in each of these four Boroughs, and a staff of

probation officers was appointed to serve them. In 1914, the fifth and last Children's Court was opened in Bronx County. These separate courts were brought together in 1915 as the Children's Court of New York City, a new and separate division of the Court of Special Sessions.

The parallel with the origin of a special handling of adolescent offenders is evident: starting without legislative sanction, an extra-legal procedure was soon recognized by law. In 1906, Rochester received a special Children's Court Act and in 1907, the State Probation Commission became interested in a state-wide system of county children's courts. A special Children's Court Act was enacted in 1910 for Monroe County; in 1913 for Ontario County and for Chautauqua County in 1918.

The Committee on the Judiciary proposed for the State Constitutional Convention of 1915, a provision empowering the Legislature to establish Children's Courts and Domestic Relations Courts "in order to keep pace with modern theories of dealing with delinquent children". (Document No. 42, p. 16.) By an overwhelming majority of 400,000 votes this amendment was accepted by the voters of the State in 1921 after it had passed both houses of the Legislature for two successive years. In the following January, Governor Miller stated in his message to the Legislature:

"The vote on said amendment (permitting the establishment of children's courts) was an expression of public disapproval of the present system or lack of system of dealing with neglected and delinquent children. Juvenile delinquency should be dealt with in accordance with the condition and needs of the child, not under the penal law or in accordance with the rules of criminal procedure."

The Governor recommended a state-wide Children's Court Act, to be based on a non-criminal jurisdiction, which Act was passed during that same session.

In 1924, the Children's Court Act for New York City was made law, which established it as an independent tribunal for

the hearing and treatment of children's cases, and completely freed it from any of the features of criminal procedure. With the Domestic Relations Court Act for New York City in 1933, the Children's Court took its place in a family court setting.

The current attitude toward the children's court is well summed up in the Reports and Studies prepared for the State Constitutional Convention in 1938:

"Its purpose is not primarily to punish a child for the commission of a specific wrong or to declare the nature of his legal rights, but to discover the causes of the child's neglect or delinquency and then to determine what can best be done in his interest and in the interest of the State to rehabilitate him or to arrest further neglect or delinquency." (p. 660.)

Children's Courts Today

Today there are six counties (Albany, Erie, Herkimer, Montgomery, Onondaga and Westchester) which have specialized children's courts, with full-time judges who devote themselves exclusively to this work, while in three counties of the State (Jefferson, Monroe, and Oneida) special county judges serve as children's court judges. In the remaining forty-eight counties of the State (New York with its five counties is not here included) the same judge who presides over the children's court also sits on the bench of the county court and he sometimes acts as surrogate as well. One judge of such a county aptly described himself—and other judges similarly placed—as a "triple-threat man". In the smaller counties, the reason for this is found in the fact that the children's courts do not have a sufficiently large number of juveniles appearing before them to justify the creation of a distinct and separate tribunal.

The Children's Court Law of 1922 provides that where—in the opinion of the county board of supervisors and of the county judge or judges—the juvenile business in any county does not merit the election of a special children's court judge, the county

judge shall sit as judge of the children's court as well. The point of origin for the creation of separate children's court judgeships rests with the county boards of supervisors; the judge's opinion is only a concurring one, and alone he may not initiate a move for the establishment of a separate court. As a result of the attitude of county boards of supervisors, there are many counties among the forty-eight now without children's courts where the amount of such business amply merits the election of a judge who will devote full time to children's cases. It is the responsibility of these communities to make their demands known to their county officials.

Previous reports of this Committee have quite adequately covered the question of the extent of delinquency among the children of New York State, and the trend in delinquency rates from the start of the century up to within very recent years. These same reports have also examined into the causative factors in the development of delinquent conduct.

It has been established that as far as the number of children coming into court is concerned, the rate of increase has by no means been proportionate to the growth of population (even the growth in the number of children within children's court age) between the years 1903 and 1938. The Committee can therefore say with finality and conviction that there is no reason for alarm on the part of the citizens of this State that the tide of delinquency among children is rising or that there are any grounds for fearing that it may engulf the forces established by society for apprehending and treating young offenders. This statement refers, of course, to the child seven to sixteen. The matter of adolescent criminality, the problem of the offender in the upper teen-ages, is not dealt with here, but in chapter 5, pages 97-108.

As to the problem of crime causation, the Committee has previously submitted to the Legislature, detailed and expert reports prepared by the clerical and research staffs of the Committee. A brief recapitulation of these findings may not, however, be amiss at this point. Despite the extensive and varied causes ascribed for the development of delinquent tendencies and acts among children, by witnesses who have appeared before us, there was una-

nimity on one point—that the roots of crime spring from all the disorders, all the varied forms of social pathology so evident in the picture of contemporary life. To list these causes is but to call the roll of all the social ills. One fact nevertheless stands out—if there is no single cause of crime, neither can there be any single panacea. To isolate one cause among many, to emphasize one cure-all above many salutary measures that must be taken, is to distort the problem of crime causation out of all true focus, to blur rather than sharpen the total image.

It does not lie within the province or the powers of this Committee to introduce legislation which can—or will—make the home, the school, the religious or social agency more aware of its responsibility “. . . to give the child within its jurisdiction such care, protection and assistance as will best conserve its welfare”. By no law that we might propose, or that the Legislature might enact, could all the pernicious influences which now bear upon the lives of children be eliminated, or reduced to the point where they no longer had a deleterious effect.

We cannot, however, leave the subject of crime causation without this final word—that all the measures which increase the social and economic welfare of the people generally will raise the level of child care and—if only indirectly—reduce the number of children who commit offenses and come before our courts.

If delinquency has not increased in proportion to the increase in the child population, it is only because we have expanded the measures for detecting and treating maladjustment among young people. There are those who see in the failure of the juvenile delinquency rate to increase, reasons for halting child-caring services in general at their present level. This Committee has no patience with that point of view. It is our earnest conviction that only by redoubling present efforts on the part of all those agencies which deal with children—public and private, educational and recreational, court and non-court, clinical and institutional—will the present rate continue to dip downward, and scores of thousands of blighted young lives salvaged at a point early enough to enable them to become positive assets to the state whose concern for them is one of its most important functions.

It is well to remember that measures for the special care of the juvenile offender are little more than one hundred years old, that the institution of the juvenile court itself was created in 1899, that the first children's court in New York State was established in 1901, that the State-wide Children's Court Act was passed just two decades ago. It is a tribute to the progressive, socially-minded citizens of this State that they have continually striven to increase the age and offense jurisdiction of these tribunals. It should be kept in mind, furthermore, that the juvenile court started in the large metropolitan areas of this country. The reason for this lay chiefly in the fact that the large cities have always had a higher rate of delinquency and crime in proportion to their area than the non-urban centers of population: the problem was not only seen more clearly in the cities, it was also more acute.

The enactment of the first juvenile delinquency laws in this State in 1902, 1906 and 1910 brought about certain beneficial objectives from which there has since been no retreat. Among these are: a distinction between the adult criminal and the youthful offender; the consideration of the cases of delinquent children on the basis of their condition rather than on the basis of their offense; separation of the treatment of the juvenile from the procedure and organization of the criminal court; the introduction of new and exact provisions as to juvenile court method, from arrest through disposition, especially the requirements as to hearing in place of trial. Each year since its passage these principles of the original code have been applied with increased effectiveness by our courts for children.

The Committee has been advised that in other states (which it is not necessary to mention here) the court for children has been placed on the defensive. It has been limited in its jurisdiction in recent years, and in some places deprived of its power to such an extent that it is only allowed to continue by the sufferance, so to speak, of the criminal court of which it is a part. The Committee is happy to report that our appellate courts when called to pass on the decisions of the children's court have shown an enlightened attitude toward the basic philosophy and fundamental principles upon which the institution of the children's

court has been reared. We believe that public opinion, the Legislature and the Courts of New York State, as a result of their aggressive defense of the rights of children, have maintained the court procedure at a continuously high level of performance.

Two recent cases may be cited as examples of the manner in which our courts have affirmed the protective and non-criminal nature of children's court proceedings. A court decision in 1934 has definitely established that the Children's Court Act gives to the court for children "exclusive jurisdiction to hear and determine the cases of children under the age of sixteen years who are charged with juvenile delinquency. The result is that the only crimes which a child under sixteen years of age is capable of committing are treason, murder in the first degree, and murder in the second degree; and as to those crimes alone, in the cases of such a child, have the criminal courts jurisdiction". (*People v. Murch* 263 N. Y. 285, 189 N. E. 220.)

The basic philosophy of the Children's Court—that actions in such a court are not *against* but rather *in behalf of* a child who comes before it—has been stated unequivocally in another recent decision: ". . . the purpose and jurisdiction of the Children's Courts is not in the nature of a trial and punishment of children for a violation of . . . law at all, but rather for the guidance and redemption of neglected and delinquent children". (*People v. S.P.C.C.*, New York Law Journal, Sept. 2, 1927, p. 2141.)

It is our earnest hope that there shall be no slackening of the steady progress which the children's courts of this State have made since their inception forty years ago. This level can be maintained only by constant and vigilant interest in the welfare of the children of New York State.

Children's Court — Specialist in Behavior Problems

In view of the added responsibility to be given to the children's courts under the bills which we submit herewith, it may be well for the Legislature to consider removing cases of neglect and of the physically handicapped from the jurisdiction of these courts.

In the Committee's opinion these are essentially matters for administrative dealing by our existing County Departments of Child Welfare. The extension of social security funds and programs for children in rural areas, formerly without such services, has made the handling of these cases by the children's courts largely obsolete.

While we are not prepared to recommend a bill on this subject at this session, we urge upon the Legislature that after the youth court plan has been in operation at least a year that consideration should be given to relieving the children's courts of jurisdiction over these two types of cases in order to free them for the added responsibility over the youthful offender who is sixteen, seventeen and eighteen years of age.

The children's court was established originally to deal with problems of delinquent behavior. Many other conditions of children have been added from time to time to the court's jurisdiction. The trend in this country at the present time is in the direction of restricting the children's courts to cases involving behavior problems. We believe that the children's courts can only do a better job with the juvenile delinquent and the youthful offender if they will be relieved of these essentially administrative functions in relation to the neglected and the physically handicapped child.

The Children's Court Committee

Because a great deal of the effectiveness of the work done by the children's court is dependent upon the degree of cooperation and understanding which this work receives in the community, many children's courts have had associated with them—since the beginning of this movement—advisory boards or committees made up of citizens who advise and cooperate with the court and help to interpret its work to the community.

A further reason for such boards is the fact that the term of office of children's court judges, because it is limited to six years, does not provide that continuity of interest in the problems of children which would result from a longer period for these judges. Furthermore, the court often desires assistance in the

selection and appointment of probation officers and other court personnel. Here the advice of an advisory board or committee is invaluable.

Such boards help to raise funds for activities of the court which are not always chargeable to a governmental department. The board helps to establish proper relations between the court and the community agencies which work with it. The development of foster homes for temporary detention as well as for placement, the securing of clinical facilities, the cooperation of educational authorities and other public agencies is often accomplished and interpreted through the work of lay people organized to assist the work of the children's court.

Other states specify the appointment of such groups by law, but in New York their organization has come about purely on a voluntary basis. In the few counties where lay committees have been formed, the judge or the probation department has taken the initiative. The county child welfare bureaus are ideally suited to this purpose.

One of the best known of these committees is that associated with the Children's Court of Onondaga County. This Committee is made up of representatives of community agencies such as the League of Women Voters and civic leaders who have informed themselves in conscientious fashion regarding the work of the court in order that they may the more effectively help to translate its work to the community. A similar committee is also in operation in Warren County and we are informed that such a committee is contemplated for Erie County as well.

The Committee looks with favor upon the work of these committees and suggests that children's courts in other places seriously consider the value to be gained from the creation of such groups in other parts of the State.

Responsibility of the School

Many educators have appeared before the Committee to give their opinion regarding the school's responsibility for the observation and treatment of conduct disorders. They were likewise

most cooperative in answering the questionnaire which the Committee sent out in 1939. The Committee believes with them that the schools have a definite duty toward the maladjusted children who attend the public schools of this State. The school is, after all, the one agency of government which has all of the children of the State under care for some time during their formative years. We have made great progress in extending special facilities to children with special difficulties—the blind, the deaf and dumb, the physically handicapped, the mentally defective or disordered, and others. Personality difficulties are as serious a condition meriting just as much public attention as these other conditions for which the schools have now made provision.

The role of the school in the observation and treatment of conduct disorders likely to lead to delinquency and crime is most clearly set forth in the 1927 report of the New York State Crime Commission. This Commission made a study of the careers of 251 adolescents who had been school truants six years earlier. It was discovered that 51 per cent of these truants of 1921 had, by 1927, acquired court records. Almost a third of these records were for a misdemeanor or felony. Even more startling was the discovery that 30 per cent of the former truants had, within these six years, an average of four arraignments each in the criminal courts.

The school is the setting within which the child gets his first important acquaintance with the outside world, where he finds himself for the first time up against a series of daily situations which he must successfully meet in order to secure satisfaction and the approbation of his companions and his adult leaders. By far the largest proportion of children within our public schools secure a high measure of satisfaction. There is, nevertheless, a sizable group of children to whom school is, for one reason or another, a boring, chafing, restricting and otherwise unsatisfactory place. Like other human beings, children tend to escape from situations which render them no positive satisfactions. This is the fundamental reason for the largest proportion of school truants. The fact that truancy has been greatly reduced within the last two decades is proof of the fact that the

school curriculum generally has been made more flexible, more attractive and more attuned to individual needs and interests.

What is required now is a greater measure of individualization, a greater flexibility, in order that the proportion of children who find no satisfaction within the school may be still more drastically reduced.

The psychiatrist at Elmira Reformatory, Dr. Rene Breguet, in a very thorough and interesting statistical analysis of 1,000 commitments to that institution, discovered a fact which should challenge the educational leaders of this State—*i.e.*, that the age of beginning delinquency among these reformatory inmates was closely coincidental with that point in their school development when the demands of the curriculum started to exceed their mental ability as judged by the intelligence quotient.

Thus we see that when the school yields them little or no return for the interests and energies with which they are equipped, these children will seek elsewhere for such satisfactions.

The fact that the truant is out of school at a time when everyone else is at school means that he is more likely to engage in delinquent acts. He is further led into unlawful conduct by the fact that, because he is absent during school hours, he must be constantly on the lookout for an officer who may apprehend him. The boy who finds nothing within the school to attract him is tempted into misconduct as a means of compensating for his failure or inability to win approbation in acceptable ways.

We therefore urge upon the educators of this State that they take further measures to deal in preventive fashion with cases of truancy and other forms of school maladjustment when the first symptoms of these conditions are revealed. The schools may not be charged with the legal responsibility for hearing and treating cases of delinquency, because they do not have the "added punch of the law" which now undergirds the jurisdiction of our courts for children. There is no reason, however, why the schools should not assume a larger measure of responsibility toward those maladjusted pupils now within their control who have not yet been adjudicated delinquent.

Development of Probation

In any discussion of the children's court procedure or other methods for dealing with the offender under twenty-one, it is important to remember that the establishment of the first Children's Court in the State, in Buffalo, and the passage of the first probation law in the State, both took place in the same year—1901. This law applied only to persons over the age of sixteen (except in the City of Buffalo) and its use was limited to cities only. Amendments made during the following four years gradually included children and extended the benefits of the Act to all parts of the State.

Probation in its early years in New York developed slowly and irregularly. A Commission to investigate this new court addition was appointed in 1905. In the following year it reported to the Governor that only a few courts had carried into effect the provisions of the existing law relative to the appointment of probation officers. The Commission further pointed out that each of these courts had established a different probation procedure. It recommended some kind of state-wide supervision, as a result of which the Legislature created a permanent State Probation Commission in 1907.

The Commission was authorized to exercise general supervision over the work of probation officers, to keep informed as to their work, to improve and extend the probation system, to collect and publish information thereon and to make recommendations. No probation statistics were compiled prior to this time.

In the following year the first State Conference of Probation Officers was held and since that time has continued to meet annually.

In 1921 the Commission published a summary of the improvements in probation service which had taken place in the preceding fourteen years. These were:

1. an increased use of preliminary investigation prior to any decision to place on probation, which implied greater discrimination in the selection of cases suitable for probation;

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2. the increased length of the probation period with the general acceptance of the necessary care to cover a substantial period of time—usually not less than three months;
3. the conditions of probation were being made more definite and the laws against probation violation more vigorously enforced;
4. a higher collection rate of money payments ordered by the court as restitution, fines, and non-support assessments;
5. improvement in case work methods—careful investigations, home visits, cooperation with outside agencies, more thorough case records;
6. increased public discussion of probation method.

The Commission, in summing up these achievements, stated that "probation has passed through the test of the experimental state in New York. It has proven to be both socially and financially profitable". In the same year, courses in preparation for probation work were given in at least three universities throughout the State. Starting with 1925, the Commission reported that each year saw more persons on probation than in correctional institutions in the State.

The 1926 report stressed the lack of sufficient personnel, inadequate salaries and excessive case loads as the three chief obstacles to the full use of probation method by the courts. In 1928 the Legislature passed a law, based on the recommendation of the Crime Commission, that no person was to be placed on probation without a preliminary investigation and a report of the circumstances of the offense, the criminal record, if any, and the social history. The year 1929 saw the first institute for probation officers already in service and the issuance of a handbook of general rules for the administration of probation, formulated and approved by the Commissioner of Correction.

As of 1939, the division of probation had established district examiners for consultation with local probation officers in four areas of the State who were to inspect local probation work, to aid in the solution of difficult local problems and to work for a closer and more understanding relationship with individual departments in each area. In this latter year the probation divi-

sion investigating the use of probation reports by penal and correctional institutions regarding newly admitted inmates discovered that such reports were received in 77 per cent of all new admissions.

At the present time fifteen out of the sixty-two counties of the State have no publicly salaried probation officer for the cases of juveniles or adults. These counties are Allegany, Chautauqua, Chenango, Genesee, Greene, Orleans, Otsego, Putnam, Schoharie, Steuben, Sullivan, Wayne, Washington, Wyoming, Yates. There are in addition six other counties which, while making some provision for juvenile probation, have no salaried probation service for adults—Columbia, Herkimer, Rensselaer, Schenectady, Schuyler, Tioga.

Certainly the institution of probation has been established long enough to have won universal approval as a social method of dealing with convicted offenders—either children or adults—who require some kind of court supervision in order to enable them again to take their place in their communities. While it is not within the power of the Legislature to do so, nevertheless this Committee strongly recommends that the gaps in our probation service be filled by the appointment of probation officers in those counties which are now without them. This may call for some State subsidy, which we believe should now be done. In return for such a subsidy, the State—through its division of probation—should have a greater measure of control over local probation work, specifically through certification of local appointments to the probation service and the removal of certain officers for good and sufficient reason.

At the present time commitments by criminal courts in our counties are made in large numbers to completely state-supported penal and correctional institutions. There is not, nor has there ever been, any question that this is a proper field for State administration. Yet when these same criminal courts place a person on probation, the quality of the investigative and supervisory service which he receives is based entirely on the financial means of the county to provide good probation service.

We believe that the time has come to raise the level of probation service in this State to the level of the best that can be found

anywhere within our borders. The recent step in New York City towards the consolidation of the work of seven or eight separate and distinct probation services is a move in the direction of raising the general plane of probation, not only of improving the lowest and least adequate.

Along this same line, we have submitted a bill to make the State-wide Children's Court Act comparable with the New York City Act in regard to the duties of chief probation officers of children's courts. (See chapter 4, pp. 67-69).

Rural Probation Work

The Erie County Probation Department may be cited as an example of how county probation work, when centrally administered, may be extended to rural areas of the State. Outside of the City of Buffalo, Erie County has a population of over 200,000, including an area greater than a thousand square miles and containing twenty-seven towns, in which are located two cities of the third class and several villages.

The Probation Department has divided this County into several districts with one probation officer in charge of each. At least one branch office or reporting station has been established in each district—space and facilities have been made available to the Probation Department through the help of the local town and village officials. This arrangement not only facilitates the reporting of probationers, but makes possible a better working relationship between the judges and the probation officers. Of the one hundred-odd justices of the peace and police justices serving the rural areas, about one-half handle criminal matters. These judges hear thousands of cases each year—of the total number of persons convicted in 1940, 556 were placed on probation to the County Department.

The pre-sentence investigations made by the probation officer for submission to the magistrates in the rural courts are comparable to the reports prepared for county court and supreme court judges. These local justices also receive recommendations from their probation officers either in writing or verbally before sentence. Over the course of years these officers have undoubt-

edly done much to educate the local magistrates, who rely upon them as consultants.

Cases placed on probation are supervised by the local probation officer working under the direction of the case supervisor in the County Department, with whom the plan of treatment is drawn up. Extensive cooperation with various social agencies in the county has been secured for cases in these rural areas as well as for those originating within the city limits of Buffalo. Because of the long distances which probationers would otherwise have to travel in order to report, probation officers, to keep reliably informed as to the conduct and condition of their charges, make a large number of supervisory visits to the homes and places of employment of their probationers. For example, during 1940, 11,806 such visits were made by the Department's officers in adult cases alone. This does not include the work done by the Juvenile Probation Division in connection with children's court cases.

Several other counties—we particularly cite Cayuga, Monroe, Nassau, Niagara, Oneida, Onondaga, Suffolk and Westchester in this regard—are increasing the aid rendered by their probation departments to local justices of the peace. Where such services are made available to them, these local magistrates have come increasingly to rely upon them.

With the extension of such rural probation service, branches of our criminal courts throughout the State would be able to render a higher degree of effective service and supervision to cases placed on probation. The first requisite is to extend probation into *every* county in the State. The next is to encourage these probation officers to carry their work into every section of their counties.

Age Limits of the Children's Court

On the question of raising the age jurisdiction of the children's court above its present level of sixteen years, the Committee has received a great diversity of opinion. In response to a questionnaire sent out by this Committee in 1939, 63 per cent of the children's court judges of this State expressed themselves in favor of raising the age by one year. A majority of the judges were

opposed to the inclusion of the seventeenth year in the children's court jurisdiction, however. By and large, sentiment for increasing the age limit of the children's court was found more frequently in the rural areas than in the large cities of the State, but even in these areas the sentiment was by no means unanimous.

During the first public hearings held by this Committee in New York City in December of 1937, the witnesses who came before us were almost unanimously opposed to the extension of the children's court age beyond its present upper limit of the sixteenth birthday in that City. Witnesses in other large cities of the State were likewise opposed to any increase in the age jurisdiction of the children's court.

The Committee is aware of the fact that the tendency throughout the country during recent years has been in the direction of raising the age jurisdiction of the juvenile court. We have been repeatedly informed that the largest majority of the states have set this limit at eighteen years. We can only report what we have found in our years of study, however, and that fact is a strongly divided opinion on the subject.

Since 1877, when the first important law for the protection of the young offender was passed by the Legislature, the sixteenth birthday has been the top age for the special consideration of children's cases by our courts. We admit that this represents no valid argument against increasing the age limit of the children's courts, if such a move were to be supported by any kind of majority sentiment such as appeared, for example, seventeen years ago, in behalf of the proposal that a constitutional amendment be enacted to allow the creation of a state-wide system of children's courts. Yet, for every convincing argument in favor of an age increase posed to the Committee there has been made one against it; for every group desiring to extend the jurisdiction of the children's court, another group has appeared in opposition. Those who would be charged with the added responsibility—the children's court judges themselves—are divided on the matter.

The Committee believes that by giving legislative sanction to a system of youth courts to deal with the offender who is sixteen,

seventeen, and eighteen years old, the same ends will be attained, and a socialized procedure introduced which will accomplish more than would be achieved by simply adding one, or at most two, years to the jurisdiction of our children's courts. Furthermore, the way is clear for the eventual addition of the nineteenth and twentieth years to the jurisdiction of these youth courts.

The Committee recommends, therefore, on the basis of all the evidence that has been laid before it that the age jurisdiction of the children's court be maintained at the sixteenth birthday in all the counties of the State.

It is of course true that, by setting an arbitrary age limit upon the jurisdiction of the children's court, some injustice may be done to those who are just slightly beyond such age limit, as well as to those well above the age of sixteen who may require, by reason of their need and condition, the parental oversight of the children's court. We have yet to devise a more equitable standard of measurement, however. If the present limits work an injustice on those above children's court age, at least that injustice operates equally upon all, which is some corrective. The psychological age of a child may, perhaps, be a better measure of his responsibility, of his right to come into a juvenile rather than an adult court, and it is not entirely unlikely that the time may come when our psychometric technique may be improved to the point where it is as accurate a standard of mental development as the calendar is of chronological age. When that time comes, indeed, the factor of intelligence will operate as much to bring adults as juveniles within the province of a non-criminal court.

Meanwhile we must continue to rely on the calendar, realizing at the same time that it is not only in the children's court—or in a youth court—that the calendar operates in this arbitrary manner. Persons below or above certain age limits are ineligible to hold certain public offices, although they may have the best physical and mental capacity and maturity. This is especially true in the case of compulsory retirement from office at certain ages. The statutes of limitations work a like apparent injustice on those whose actions are delayed beyond a certain number of years, yet these time limits are of the very essence of the statutes.

CHAPTER **IV.** COMPARISON OF THE

ACTS RELATING TO CHILDREN'S

COURTS

A more important consideration than the precise limit of children's court jurisdiction and the injustices which will result no matter at what year the limit is set, is that relating to uniform treatment of all the young people of the State, wherever they may commit their offenses, wherever they may be apprehended and brought into court.

Six different children's court acts are at present operative in this State. These include the Monroe County Act, originally passed in 1906; that of Ontario County enacted in 1913; the Children's Court Act of 1918 for Chautauqua County; the 1922 State-wide Children's Court Act; the New York City Court of Domestic Relations Act of 1933 which brought together the Children's Court and the Family Court of that City; and finally the Children's Court Act of Onondaga, which in 1936 abolished the Syracuse City Children's Court and set up in its place a court which was county-wide in its jurisdiction. These various statutes, passed at different times during the past thirty-five years, reflect the state of public opinion and the level of social work practice prevailing at those periods. As a result, some of them contain certain features which are more progressive than parallel sections of other acts, while important parts of some laws are completely lacking in others.

For example, only the New York City Children's Court may impose fines on children in amounts up to \$500; only the Onondaga Children's Court Act gives the Court jurisdiction over way-

ward minors; the state-wide Act permits the hearing of cases by a jury, a permission denied to children's courts operating under special acts; only the Children's Court Act for Chautauqua County has jurisdiction over *every* offense committed by children, while the remaining children's courts of the State are excluded from jurisdiction over offenses punishable—if committed by an adult—by life imprisonment or death. Because of the progress in social thinking which took place between the passage of these various Acts, certain of them are completely free from the vestiges of criminal procedure which still cling to others.

It is the belief of this Committee that the State has a responsibility to assure equality of treatment to all the citizens within its borders. This frequently—almost invariably—necessitates different administrative machinery for different parts of the State. Yet within the machinery of the children's court—as separately constituted in some counties, as a division of the Court of Domestic Relations in New York City—there should be absolute conformity in the legal provisions under which the cases of children who come before the court are heard, adjudicated and treated. To this end the Committee has caused a comparison to be made between the Children's Court Act for the State, the Children's Court Act for New York City and the separate Children's Court Acts for the Counties of Monroe, Ontario, Chautauqua and Onondaga.

Below we set out the changes which we believe should be made, and the reasons therefor, in order that all these laws may be brought to the point of complete conformity with one another in every essential feature.

I The state-wide Children's Court Law excludes crimes punishable by death or life imprisonment from the jurisdiction of the Children's Court. (Section 2, subdivision 2-A).

The New York City Act excludes offenses punishable by death or life imprisonment from the jurisdiction of the Children's Court. (Section 2, subdivision 15-A).

CHILDREN'S COURT ACTS

The Children's Court Law of Chautauqua gives to the Children's Court jurisdiction over every criminal offense, even those punishable by death or life imprisonment. (Chapter 464, Laws of 1918, section 1, subdivision a).

It is only in the rarest instance that children under the age of sixteen are brought into the children's courts of this State for offenses so serious that they would be punishable by death or life imprisonment if committed by an adult. These include treason, murder and kidnapping. Life imprisonment following upon a fourth conviction for a felony, or for robbery in the first degree, or burglary in the first degree after a prior conviction for a felony, is inapplicable in children's cases, as a rule, because juvenile delinquency is not a felony. In New York City, the District Attorney's office makes a practice of referring all cases of this kind to the Children's Court, in the first instance.

It is the opinion of this Committee that the Chautauqua County Act contains, in this regard, the most progressive provision to be found in any of the three sets of laws which we are here comparing. We believe that the children's court should have jurisdiction over any and all delinquent acts committed by a child, that regardless of the type of offense charged, he is entitled to the full care and protection of the State.

Where the upper age limit of jurisdiction of the children's court is not to be raised by legislative action at this time, we think it especially important that all the children's court acts of this State be made comparable as regards this essential feature.

The juvenile court laws of many states outside of New York make provision for the exemption of certain classes of offenses from the requirement that children not be detained in jail. All of the children's court acts of New York State are categoric in forbidding the detention of children in jail for whatever purpose or for however short a period of time. We believe that all of the children's court laws of the State should be equally categoric in not denying the special procedure of the children's court to those few very serious offenses which children may commit during a year. By giving to all of the children's courts of the State

exclusive jurisdiction over every offense committed by children, we shall have rid our law of one of the few remaining obsolete relics of medievalism.

To this end we submit the following bills embodying this recommendation.

An Act TO AMEND THE CHILDREN'S COURT
ACT OF THE STATE OF NEW YORK, IN RELATION TO DEFINI-
TION OF DELINQUENT CHILD

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision two of section two of chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," as last amended by chapter three hundred and ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

2. "Delinquent child" means a child (a) who violates any law or any municipal ordinance or who commits any act which, if committed by an adult, would be a crime [not punishable by death or life imprisonment]; (b) who is incorrigible, ungovernable or habitually disobedient and beyond the control of his parents, guardian, custodians or other lawful authority; (c) who is habitually truant; (d) who, without just cause and without the consent of his parent, parents, guardians or other custodian, repeatedly deserts his home or place of abode; (e) who engages in any occupation which is in violation of law, or who associates with immoral or vicious persons; (f) who frequents any place the existence of which is in violation of law; (g) who habitually uses obscene or profane language; (h) who begs or solicits alms

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

or money in public places under any pretense; or (i) who so deports himself as to wilfully injure or endanger the morals or health of himself or others.

§ 2. This act shall take effect immediately.

An Act TO AMEND THE DOMESTIC RELATIONS COURT ACT OF THE CITY OF NEW YORK, IN RELATION TO THE DEFINITION OF DELINQUENT CHILD

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision fifteen of section two of chapter four hundred and eighty-two of the laws of nineteen hundred thirty-three, entitled "An act to establish in and for the city of New York a court of domestic relations, to be known as the domestic relations court of the city of New York, and defining its powers, jurisdiction and procedure and providing for its organization," as amended by chapter three hundred and sixty-two of the laws of nineteen hundred thirty-four, is hereby amended to read as follows:

(15) Delinquent child means a child over seven and under sixteen years of age (a) who violates any law of the United States or of this state or any ordinance of the city of New York, or who commits any act which if committed by an adult would be an offense [punishable otherwise than by death or life imprisonment]; (b) who is incorrigible, ungovernable or habitually disobedient and beyond the control of his parents, guardian, custodian or other lawful authority; (c) who is habitually truant; (d) who, without just cause and without the consent of his parent, guardian or other custodian, deserts his home or place of abode; (e) who engages in any occupation which is in violation of law; (f) who begs or who solicits alms or money in public places; (g) who associates with immoral or vicious persons; (h) who frequents any place the maintenance of which is in violation of law;

(i) who habitually uses obscene or profane language; or (j) who so deports himself as wilfully to injure or endanger the morals or health of himself or others.

§ 2. This act shall take effect immediately.

An Act TO AMEND CHAPTER SIX HUNDRED AND ELEVEN OF THE LAWS OF NINETEEN HUNDRED TEN, ENTITLED "AN ACT CONFERRING JURISDICTION UPON THE COUNTY COURT OF MONROE COUNTY TO ADJUDICATE UPON ALL CASES OF CHILDREN IN MONROE COUNTY UNDER SIXTEEN YEARS OF AGE, WHO ARE DELINQUENT, NEGLECTED OR OTHERWISE SUBJECT TO THE DISCIPLINE OR IN NEED OF THE CARE AND PROTECTION OF THE STATE; AND REGULATING THE PROCEDURE IN SUCH CASES, INCLUDING THE ESTABLISHMENT OF A DETENTION HOME, A PROBATION SYSTEM AND THE APPOINTMENT OF GUARDIANS FOR SUCH CHILDREN," IN RELATION TO APPLICATION OF ACT WITH RESPECT TO CHILDREN'S OFFENSES

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision A of section two of chapter six hundred and eleven of the laws of nineteen hundred ten, entitled "An act conferring jurisdiction upon the county court of Monroe county to adjudicate upon all cases of children in Monroe county under sixteen years of age, who are delinquent, neglected or otherwise subject to the discipline or in need of the care and protection of the state; and regulating the procedure in such cases, including the establishment of a detention home, a probation system and the

appointment of guardians for such children," is hereby amended to read as follows:

A. Who violates any penal law or any municipal ordinance, or who commits any act or offense for which he could be prosecuted in a method partaking of the nature of a criminal action or proceeding [(except a crime punishable by death or life imprisonment)], or

§ 2. This act shall take effect immediately.

An Act TO AMEND CHAPTER TWO HUNDRED AND SEVENTY OF THE LAWS OF NINETEEN HUNDRED THIRTEEN, ENTITLED "AN ACT CONFERRING JURISDICTION UPON THE COUNTY COURT OF ONTARIO COUNTY IN MATTERS RELATING TO CHILDREN; AND REGULATING THE PROCEDURE IN SUCH CASES, INCLUDING THE TEMPORARY DETENTION OF CHILDREN, A PROBATION SYSTEM AND THE APPOINTMENT OF GUARDIANS," IN RELATION TO APPLICATION OF ACT WITH RESPECT TO CHILDREN'S OFFENSES

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision (a) of section two of chapter two hundred seventy of the laws of nineteen hundred thirteen, entitled "An act conferring jurisdiction upon the county court of Ontario county in matters relating to children; and regulating the procedure in such cases, including the temporary detention of children, a probation system and the appointment of guardians," is hereby amended to read as follows:

(a) who violates any penal law or any municipal ordinance, or who commits any act or offense for which he could be prosecuted in a method partaking of the nature of a criminal action

or proceeding **[(except a crime punishable by death or life imprisonment)]**, or

§ 2. This act shall take effect immediately.

2 The State-wide Children's Court Act gives to the court, in its discretion, permission to hear and determine cases with or without a jury of six. (Section 14.)

The four special County Acts and the New York City Act have no provision regarding the requirement or absence of a jury.

The appellate courts of the State have clearly established (see pp. 35 and 36) that an action relative to a delinquent child is not in the nature of a criminal proceeding and, therefore, the New York City Act and the County Acts are correct in making no provision for jury trials.

Most juvenile court acts in other states similarly omit this provision. Both the standard juvenile court law and the juvenile court standards issued by the Federal Children's Bureau jointly with the National Probation Association emphasize that denial of the right to a jury trial does not constitute a deprivation of rights under due process of law. The Monroe County Act, which makes no mention of jury trials, clearly states that children are to be considered not as criminals, but as wards of the State. The formal criminal court procedure which accompanies a jury trial has nothing in common with the informal hearing of the children's court which aims at discovering the facts underlying the child's background and condition. It is self-evident that failure to provide for jury trials for juveniles cannot apply to the cases of adults coming before the children's court, who are of course entitled to such a trial if they request it.

The Committee is in favor of the abolition of the jury trial in children's cases because it is inconsistent with both the law and the philosophy upon which the children's court code is based.

To this end we submit a bill embodying this recommendation.

An Act TO AMEND THE CHILDREN'S COURT ACT OF THE STATE OF NEW YORK, IN RELATION TO PRO- CEDURE

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Section fourteen of chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, powers and duties, and regulating procedure therein," as last amended by chapter three hundred and ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

§ 14. Procedure. Where the method of procedure in a case or proceeding in which the court has jurisdiction is not provided in this act, such procedure shall be the same as provided by law, or by rules formally adopted by the court within the scope of this act[[], but the court may hear and determine causes in which it has jurisdiction with or without a jury, in the discretion of the court. If there be a jury, the number of jurors shall be six and the jury shall be drawn and a trial had in the same manner as obtains in the trial of criminal actions in the county court of said county, and the jury shall be in charge of the county officers the same as though said trial was in fact held in the county court[]].

§ 2. This act shall take effect immediately.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

3 The State-wide Children's Act makes no express provision for fines in children's cases: that section of the Act which refers to judgments (Section 22, subdivision f) makes no reference whatsoever to the use of fines.

The Children's Court Acts of Chautauqua, Monroe, Ontario and Onondaga County make no express provision for the imposition of fines in children's cases.

The New York City Act gives the children's court power, after adjudication, to render judgment including "a fine in a sum not to exceed \$500, or in the alternative to remand, commit or place on probation . . .". (Section 83, subdivision D.)

Progressive juvenile courts have long since discouraged the use of fines in children's cases, because of their experience that such penalty falls usually upon the parents who are compelled to pay the fine, and not the child. In earlier days, before the restrictions on the employment of children, such penalties may have served to deter from further wrong doing. A child does not usually have funds at his disposal, and a fine thus has little effect on him—either as a disciplinary measure or as a means whereby respect for property may be instilled. If the parent is the person responsible for contributing to the delinquency of the child, then the fine should be levied against him, but he should not be indirectly penalized.

The power to impose a fine is inconsistent with the non-criminal nature of the children's court procedure. Some children's courts now make restitution a condition of probation in certain cases, but this kind of disposition subordinates the monetary factor to the treatment process, instead of making it the sole consideration.

The Committee believes that the New York City Act should be amended so as to omit this power to levy fines upon children.

A bill embodying this recommendation immediately follows.

An Act TO REPEAL SUBDIVISION (D) OF SECTION EIGHTY-THREE OF THE DOMESTIC RELATIONS COURT ACT OF THE CITY OF NEW YORK, RELATING TO IMPOSITION OF FINES, AND RENUMBERING CERTAIN SUBDIVISIONS OF SUCH SECTION

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (d) of section eighty-three of chapter four hundred and eighty-two of the laws of nineteen hundred thirty-three, entitled "An act to establish in and for the city of New York a court of domestic relations, to be known as the domestic relations court of the city of New York, and defining its powers, jurisdiction and procedure and providing for its organization," as amended by chapter nine hundred and forty-three of the laws of nineteen hundred forty-one, is hereby repealed.

§ 2. Subdivisions (e), (f), (g) and (h) of such section, as amended by chapter nine hundred and forty-three of the laws of nineteen hundred forty-one, are hereby renumbered, respectively, subdivisions (d), (e), (f) and (g).

§ 3. This act shall take effect immediately.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

4 The State-wide Children's Court Act empowers the judge of any children's court to visit any institution to which a child may be remanded or committed by the Children's Court of his County (section 45). The same permission is also found in the Onondaga County Act (section 2).

The New York City Court Act provides that each institution to which a child has been committed must be

visited and inspected by at least one of the justices at least once a year (section 87).

The Children's Court Act of the County of Ontario makes it the "duty" of the County Judge "as far as practicable" to inspect at least once a year all institutions where there is any child under commitment. The Monroe Act specifies the first, but omits the latter condition. Under the laws of both counties, these judges have the further power to investigate, and to examine witnesses under oath concerning the conditions prevailing in such institutions (section 18 of each Act).

The Children's Court Act of Chautauqua County makes no provision for visitation or inspection of juvenile institutions by the judge of this county.

The Committee has been very much concerned with this matter of visits by judges to the institutions to which they remand or commit children—a rather thorough presentation of this matter may be found below on pages 215–219. We consider this subject to be of sufficient importance to merit the restatement here of our belief that judges should be interested in the institutions to which they may commit or remand children and that they should furthermore have not only the power, but also the obligation to visit and inspect these places.

The provision of the Children's Court Act of Monroe County which gives the judge power to investigate the conditions under which children are treated at these institutions should be made available to all the judges of all the children's courts in the State. Judges who might not otherwise follow this procedure should be required by law to make at least an annual visit, even if it be only a "duty call".

To this end we submit the following bills embodying this recommendation.

An Act TO AMEND THE CHILDREN'S COURT ACT OF THE STATE OF NEW YORK, IN RELATION TO VISITATION, INSPECTION AND INVESTIGATION OF INSTITUTIONS

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section forty-five of chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," as last amended by chapter three hundred and ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

§ 45. General provisions; court records; construction. In the hearing of any case coming within the provisions of this act the general public shall be excluded and only such persons and the representatives of authorized agencies admitted thereto as have a direct interest in the case. All cases in which children are directly involved or appear shall be heard separately and apart from the trial of cases against adults. A room separate and apart from the regular courtroom shall be provided for the use of the children's court, together with suitable quarters for the use of the judge, the probation officers and other employees of the court.

The court shall devise and cause to be printed such forms for records and for the various petitions, orders, processes and other papers for the use of the court or in the cases or proceedings instituted under or pursuant to provisions of this act as shall be deemed necessary to meet the requirements of the court.

The court shall maintain a full and complete record of all cases brought before it. The county shall provide a separate place for the filing of all papers in a manner similar to filing papers of a county court. All such records may be withheld from indis-

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

criminate public inspection in the discretion of the judge, but such records shall be open to inspection by the parent, guardian, next friend or attorney of the child. Any authorized agency to which a child is committed may examine the record of investigation and may in the discretion of the court obtain a copy of the whole or a part of such record.

No adjudication under the provisions of this act shall operate as a disqualification of any child subsequently to hold public office or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no child shall be denominated a criminal by reason of such adjudication, nor shall such adjudication be denominated a conviction. Neither the fact that a child has been before the children's court for hearing, nor any confession, admission or statement made by him to the court or to any officer thereof while he is under the age of sixteen years, shall ever be admissible as evidence against him or his interests in any other court.

All provisions of the penal law or code of criminal procedure or other statutes inconsistent with or repugnant to any of the provisions of this act shall be considered inapplicable to the cases arising under this act. All statutes and laws, not inconsistent with these provisions, relating to courts exercising general jurisdiction shall apply with full force and effect, except as herein otherwise specifically provided. Chapter four hundred and eighty-nine, laws of nineteen hundred and fifteen, is hereby repealed.

[The] *It shall be the duty of the judge of said court* **[shall have the power]** *officially, at least once a year, to visit and inspect any institution to which a child may be remanded or committed by the children's court of his county. The judge of said court may also examine witnesses under oath within the county where any such institution is located, or appoint a referee for the purpose of obtaining any information as to the efficiency and character of such institution.*

Any child placed out, boarded out or committed under order of the court shall be subject to the visitation and supervision of the state board of social welfare in accordance with the provisions of the **[state charities]** *social welfare law.*

This act shall be construed to the end that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that as far as practicable they shall be treated not as criminals but as children in need of aid, encouragement and guidance.

§ 2. This act shall take effect immediately.

An Act TO AMEND THE DOMESTIC RELATIONS COURT ACT OF THE CITY OF NEW YORK, IN RELATION TO POWERS OF INVESTIGATION WITH RESPECT TO INSTITUTIONS TO WHICH DELINQUENT CHILDREN ARE COMMITTED

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section eighty-seven of chapter four hundred and eighty-two of the laws of nineteen hundred thirty-three, entitled "An act to establish in and for the city of New York a court of domestic relations, to be known as the domestic relations court of the city of New York, and defining its powers, jurisdiction and procedure and providing for its organization," is hereby amended to read as follows:

§ 87. Visits to institutions. At least once each year it shall be the duty of the justices to cause each institution to which a delinquent child shall have been committed by the court during the year to be visited and inspected by at least one of the justices. *Such justices may also examine witnesses under oath within the county where any such institution is located or within the city of New York if the institution be located therein, or appoint a referee for the purpose of obtaining any information as to the efficiency and character of such institution.*

§ 2. This act shall take effect immediately.

An Act TO AMEND CHAPTER FOUR HUNDRED AND SIXTY-FOUR OF THE LAWS OF NINETEEN HUNDRED EIGHTEEN, ENTITLED "AN ACT CONFERRING JURISDICTION UPON THE COUNTY COURT OF CHAUTAUQUA COUNTY TO ADJUDICATE UPON CASES OF CHILDREN IN CHAUTAUQUA COUNTY UNDER SIXTEEN YEARS OF AGE WHO ARE DELINQUENT, NEGLECTED, OR OTHERWISE SUBJECT TO THE DISCIPLINE OR IN NEED OF THE CARE AND PROTECTION OF THE STATE, AND UPON CASES OF ADULTS WHO MAY BE RESPONSIBLE FOR OR CONTRIBUTE TO THE CONDITION OF SUCH CHILDREN; AND REGULATING THE PROCEDURE IN SUCH CASES, INCLUDING PROVISIONS FOR THE DETENTION OF CHILDREN, A PROBATION SYSTEM AND THE APPOINTMENT OF GUARDIANS," IN RELATION TO VISITATION, INSPECTION AND INVESTIGATION OF INSTITUTIONS

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Chapter four hundred and sixty-four of the laws of nineteen hundred eighteen, entitled "An act conferring jurisdiction upon the county court of Chautauqua county to adjudicate upon cases of children in Chautauqua county under sixteen years of age who are delinquent, neglected, or otherwise subject to the discipline or in need of the care and protection of the state, and upon cases of adults who may be responsible for or contribute to the condition of such children; and regulating the procedure in such cases, including provisions for the detention of children, a

probation system and the appointment of guardians," is hereby amended by adding thereto a new section, to be section nineteen-a, to read as follows:

§ 19-a. *Visitation and inspection of institutions. It shall be the duty of the judge of said court to visit and inspect at least once a year each institution in which there shall be at the time any child under commitment pursuant to this act, and the managers and officers of said institution shall accord to said judge full opportunity to inspect the said institution in all its departments. Said judge may examine witnesses under oath within the county where said institution is located, or appoint a referee for the purpose of obtaining any information as to the efficiency and character of such institution.*

§ 2. This act shall take effect immediately.

5 The State-wide Act specifies that in neglect proceedings (as in delinquent proceedings) the petition shall be titled "in the matter of . . . , a child under sixteen years of age" (section 10).

The New York City Children's Court Act by amendment in 1937 titles the proceeding relative to a neglected child "in the matter of . . . parent, parents, custodian or custodians, . . . of a child . . . alleged to be a neglected child."

In the Children's Court Acts of Chautauqua, Monroe, and Ontario Counties, the provision regarding petitions relative to neglected children is similar to that in the State-wide Act. In Onondaga County, the State-wide Act itself is applicable.

Prior to 1937 when section 71 of the New York City Children's Court Act was amended as above, children were the respondents—defendants—in neglect proceedings. Since Chapter 726 of the Laws of 1937, the parent or custodian of the child has been made the respondent in these proceedings. The present State-wide law and the Children's Court Acts in the Counties of

Chautauqua, Monroe, and Ontario still hold the child as the respondent in neglect proceedings which is, in effect, incongruous. The person charged with the neglect of the child should properly be the respondent in a neglect proceeding and he should have an opportunity to answer the charge.

The Committee believes that the rest of the State ought to be given the advantage of this procedure which is socially proper and just, and to this end we submit the following bills embodying this recommendation.

An Act TO AMEND THE CHILDREN'S COURT ACT OF THE STATE OF NEW YORK, IN RELATION TO TITLE OF PROCEEDINGS IN CASES OF ALLEGEDLY NEGLECTED CHILDREN

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section ten of chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," as amended by chapter three hundred and ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

§ 10. Petition. The parent or custodian of any child, an authorized agency, or any interested person having knowledge or information that a child is abandoned, neglected or delinquent or otherwise within the jurisdiction of the court may institute a proceeding by filing with the court a petition verified by affidavit, stating such facts as bring the child within the jurisdiction of the court, and praying the court for action in conformity with the provisions of this act. The title of the proceeding, *except in the case of a child alleged to be a neglected child*, shall be "Children's

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

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Court, County of , in the matter of , a child under sixteen years of age." *In the case of a child alleged to be a neglected child, the title of the proceeding shall be "Children's Court, County of..... , in the matter of , parent, parents, custodian or custodians" (as the case may be) "of a child..... alleged to be a neglected child."* The petition shall include the name and residence of the child and of the parents, if known to the petitioner, or the name and residence of the person having the guardianship, custody, control or supervision of such child if known to the petitioner, or shall set forth that they are unknown if that be the fact.

§ 2. Titles of proceedings with respect to allegedly neglected children now pending in children's courts subject to the provisions of the children's court act of the state of New York shall be deemed amended to conform to the provisions of section ten of such act, as hereby amended.

§ 3. This act shall take effect September first, nineteen hundred forty-two.

An Act TO AMEND CHAPTER FOUR HUNDRED AND SIXTY-FOUR OF THE LAWS OF NINETEEN HUNDRED EIGHTEEN, ENTITLED "AN ACT CONFERRING JURISDICTION UPON THE COUNTY COURT OF CHAUTAUQUA COUNTY TO ADJUDICATE UPON CASES OF CHILDREN IN CHAUTAUQUA COUNTY UNDER SIXTEEN YEARS OF AGE WHO ARE DELINQUENT, NEGLECTED, OR OTHERWISE SUBJECT TO THE DISCIPLINE OR IN NEED OF THE CARE AND PROTECTION OF THE STATE, AND UPON CASES OF ADULTS WHO MAY BE RESPONSIBLE FOR OR CONTRIBUTE TO THE CONDITION OF SUCH CHILDREN; AND REGULATING THE PROCEDURE IN SUCH CASES, INCLUDING PROVISIONS FOR THE DETENTION OF CHILDREN, A PROBATION SYSTEM AND THE APPOINTMENT OF GUARDIANS," IN RELATION TO TITLE OF PROCEEDINGS IN CASES OF ALLEGEDLY NEGLECTED CHILDREN

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Section three of chapter four hundred and sixty-four of the laws of nineteen hundred eighteen, entitled "An act conferring jurisdiction upon the county court of Chautauqua county to adjudicate upon cases of children in Chautauqua county under sixteen years of age who are delinquent, neglected, or otherwise subject to the discipline or in need of the care and protection of the state, and upon cases of adults who may be responsible for or contribute to the condition of such children; and regulating the procedure in such cases, including provisions for the detention of

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children, a probation system and the appointment of guardians," is hereby amended to read as follows:

§ 3. Petition. Any person having knowledge or information that a child is within the provisions of the *second* preceding section may file with the court a petition verified by affidavit, stating the alleged facts that bring such child within said provisions. The title of the proceedings, *except in the case of a child alleged to be a neglected child*, shall be "county court, children's part, county of Chautauqua, in the matter of (inserting name), a child under sixteen years of age." *In the case of a child alleged to be a neglected child, the title of the proceeding shall be "county court, children's part, county of Chautauqua, in the matter of (inserting name), parent, parents, custodian or custodians" (as the case may be). "of a child (inserting name) alleged to be a neglected child."* The petition shall set forth the name and residence of the child and of the parents, if known to the petitioner, or the name and residence of the person having the guardianship, custody, or supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown if that be the fact.

§ 2. Titles of proceedings with respect to allegedly neglected children now pending in the children's part of the county court of Chautauqua county shall be deemed amended to conform to the provisions of section three of chapter four hundred and sixty-four of the laws of nineteen hundred eighteen, as amended by this act.

§ 3. This act shall take effect September first, nineteen hundred forty-two.

An Act TO AMEND CHAPTER SIX HUNDRED AND ELEVEN OF THE LAWS OF NINETEEN HUNDRED TEN, ENTITLED "AN ACT CONFERRING JURISDICTION UPON THE COUNTY COURT OF MONROE COUNTY TO ADJUDICATE UPON ALL CASES OF CHILDREN IN MONROE COUNTY UNDER SIXTEEN YEARS OF AGE, WHO ARE DELINQUENT, NEGLECTED OR OTHERWISE SUBJECT TO THE DISCIPLINE OR IN NEED OF THE CARE AND PROTECTION OF THE STATE; AND REGULATING THE PROCEDURE IN SUCH CASES, INCLUDING THE ESTABLISHMENT OF A DETENTION HOME, A PROBATION SYSTEM AND THE APPOINTMENT OF GUARDIANS FOR SUCH CHILDREN," IN RELATION TO TITLE OF PROCEEDINGS IN CASES OF ALLEGEDLY NEGLECTED CHILDREN

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Section three of chapter six hundred and eleven of the laws of nineteen hundred ten, entitled "An act conferring jurisdiction upon the county court of Monroe county to adjudicate upon all cases of children in Monroe county under sixteen years of age, who are delinquent, neglected or otherwise subject to the discipline or in need of the care and protection of the state; and regulating the procedure in such cases, including the establishment of a detention home, a probation system and the appointment of guardians for such children," is hereby amended to read as follows:

§ 3. Any person having knowledge or information that a child residing in or actually within the county is within the provisions

of the preceding section may file with said county court a verified petition stating the facts that bring such child within said provisions. The petition may be upon information and belief. The title of the proceeding, *except in the case of a child alleged to be a neglected child*, shall be, "County Court, County of Monroe. In the Matter of (Inserting Name), a Child under Sixteen Years of Age." *In the case of a child alleged to be a neglected child, the title of the proceeding shall be "County Court, County of Monroe. In the Matter of (Insertnig Name), Parent, Parents, Custodian or Custodians" (as the case may be) "of a Child (Inserting Name) alleged to be a Neglected Child."* The petition shall set forth the name and residence of the child and of the parents, if known to the petitioner, and the name and residence of the person having the guardianship, custody, control and supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown, if that be the fact.

§ 2. Titles of proceedings with respect to allegedly neglected children now pending in the county court of Monroe county shall be deemed amended to conform to the provisions of section three of chapter six hundred and eleven of the laws of nineteen hundred ten, as amended by this act.

§ 3. This act shall take effect September first, nineteen hundred forty-two.

An Act TO AMEND CHAPTER TWO HUNDRED AND SEVENTY OF THE LAWS OF NINETEEN HUNDRED THIRTEEN, ENTITLED "AN ACT CONFERRING JURISDICTION UPON THE COUNTY COURT OF ONTARIO COUNTY IN MATTERS RELATING TO CHILDREN; AND REGULATING THE PROCEDURE IN SUCH CASES, INCLUDING THE TEMPORARY DETENTION OF CHILDREN, A PROBATION SYSTEM AND THE APPOINTMENT OF GUARDIANS," IN RELATION TO TITLE OF PROCEEDINGS IN CASES OF ALLEGEDLY NEGLECTED CHILDREN

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Section three of chapter two hundred and seventy of the laws of nineteen hundred thirteen, entitled "An act conferring jurisdiction upon the county court of Ontario county in matters relating to children; and regulating the procedure in such cases, including the temporary detention of children, a probation system and the appointment of guardians," is hereby amended to read as follows:

§ 3. Petition. Any person having knowledge or information that a child residing in or actually within the county is within the provisions of the preceding section may file with said county court a verified petition stating the facts that bring such child within said provisions. The petition may be upon information and belief. The title of the proceeding, *except in the case of a child alleged to be a neglected child*, shall be "Children's Part, County Court, County of Ontario. In the Matter of (inserting name), a Child under Sixteen Years of Age." *In the case of a child alleged to be a neglected child, the title of the proceeding shall be "Children's*

Part, County Court, County of Ontario. In the Matter of (inserting name), Parent, Parents, Custodian or Custodians" (as the case may be) "of a Child (inserting name) alleged to be a Neglected Child." The petition shall set forth the name and residence of the child and of the parents, if known to the petitioner, and the name and residence of the person having the guardianship, custody, control and supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown, if that be the fact.

§ 2. Titles of proceedings with respect to allegedly neglected children now pending in the children's part of the county court of Ontario county shall be deemed amended to conform to the provisions of section three of chapter two hundred and seventy of the laws of nineteen hundred thirteen, as amended by this act.

§ 3. This act shall take effect September first, nineteen hundred forty-two.

6 The State-wide Children's Court Act permits the children's courts to appoint psychiatrists, as well as physicians and psychologists. (Section 24.)

The New York City Act requires that the Children's Court shall be served by a psychiatric bureau, organized and staffed as an adjunct of the court. (Section 33.)

The child guidance movement, at its inception thirty years ago, was chiefly confined to the large urban centers. State-wide systems of clinics under public auspices and the establishment of clinics under private auspices have grown considerably since that time.

The New York City Children's Court Act reflects the growing awareness of the importance of expert assistance in determining the needs of children and in guiding treatment for them. The State-wide Act does not now permit the establishment of a clinic in those cities which might consider such service as an adjunct to the court. While it would be impractical to require by law the establishment of a psychiatric clinic for every children's court in

the State, nevertheless the passage of permissive legislation to that end might invite the more progressive children's courts to establish clinical services directly connected with them.

To this end we submit a bill embodying this recommendation.

An Act TO AMEND THE CHILDREN'S COURT ACT OF THE STATE OF NEW YORK, IN RELATION TO THE PERMISSIVE ESTABLISHMENT AND OPERATION OF A PSYCHIATRIC BUREAU AS AN ADJUNCT OF ANY CHILDREN'S COURT

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, powers and duties, and regulating procedure therein," is hereby amended by adding thereto a new section, to be section thirty-six-a, to read as follows:

§ 36-a. *Psychiatric bureau. A psychiatric bureau may be organized and established and serve as an adjunct of the children's court in any county, for the physical, mental and psychiatric examination of persons within the jurisdiction of the court, if the board of supervisors of the county shall authorize and provide for such bureau, and such boards are hereby so empowered. Any such bureau shall be staffed with one or more competent psychiatrists and others, in accordance with appropriate authorization, who shall be appointed by the judge of the court and serve under his direction.*

§ 2. This act shall take effect immediately.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

7

The State-wide Children's Court Act makes no detailed provision regarding the duties of chief probation officers of the children's court; it merely states that the chief probation officer shall, under the direction of the court, have supervision of the work of all other probation officers. (Section 36.)

The New York City Children's Court Act specifies the duties of the chief probation officer, stating that he shall "formulate uniform methods for the probation work of the court and develop processes in the technique of casework, including investigation, interviewing, use of records, analysis of information, diagnosis, plan of treatment, correlation of effort by individuals and agencies, and methods of influencing human behavior. It shall be his duty to scrutinize the work of all the probation officers and instruct them as to methods and technique and imbue them with proper standards and ideals of probation work". (Section 24.)

The State-wide Act does not specify the duties and functions of chief probation officers in the detailed manner found in the New York City Act. There are seventeen counties in the State (Broome, Cayuga, Chemung, Erie, Fulton, Jefferson, Monroe, Nassau, Niagara, Oneida, Onondaga, Ontario, Orange, Rockland, Suffolk, Ulster and Westchester) not including the City of New York which have appointed chief probation officers under this authorization with supervisory functions over children's court probation work alone, or in combination with work in the criminal courts. Some of these counties have only one officer, who has the title of "Chief". It is the opinion of this Committee that the powers and duties of these chief probation officers should be set forth in a manner paralleling that of the New York City Act.

There is no doubt that in many communities of the State the level of probation work is as high as that in the Children's Court of New York City. Although it is questionable whether the incorporation of these provisions in the State-wide and County

Children's Court Acts would of and by itself guarantee that the level of probation care in all children's courts would automatically be raised, we believe that the law under which they operate should nevertheless be uniform in its specifications.

In many rural counties of the State a variety of agents serve as probation officers: it is not unusual to have the district attorney or the county agent for dependent children, or other persons, serve the court in a voluntary capacity in the same manner as paid probation officers do in other parts of the State. The law should at least specify the conditions under which probation is to be administered in all of our children's courts, and these provisions should be made uniform throughout the State.

To this end we submit a bill embodying this recommendation.

An Act TO AMEND THE CHILDREN'S COURT ACT OF THE STATE OF NEW YORK, IN RELATION TO DUTIES OF CHIEF PROBATION OFFICERS

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty-six of chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, powers and duties, and regulating procedure therein," as amended by chapter three hundred and ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

§ 36. Powers and duties of probation officers. The chief probation officer shall, under the direction of the court, have supervision of the *probation* work of [all other probation officers] *the court. He shall formulate uniform methods for the probation work of the court and develop processes in the technique of case-work, including investigation, interviewing, use of records, analysis of information, diagnosis, plan of treatment. correlation of*

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

effort by individuals and agencies, and methods of influencing human behavior. It shall be his duty to scrutinize the work of all the probation officers and instruct them as to methods and technique and imbue them with proper standards and ideals of probation work.

It shall be the duty of a probation officer to make such investigation before, during, and after the hearing of any case as the court may direct and to report his finding to the court. He shall visit and keep himself informed as to the conduct and condition of each child under his supervision and shall make report thereof to the court. He shall keep accurate accounts of all moneys or other articles collected or taken from the persons under his supervision and shall make report thereof to the court. Probation officers for the purposes of this act shall have the powers of peace officers, and all provisions of the general laws of the state relating to probation, so far as they are applicable, shall apply to cases coming within the provisions of this act.

§ 2. This act shall take effect immediately.

3 This Committee is not the first to recommend the deletion from the penal law of those provisions which are out of harmony with the various children's court acts now operative in the State. The Commission to Examine the Laws Relating to Child Welfare in its years of study suggested two such changes, which were immediately enacted. (Chapter 207 of the Laws of 1923 and 436 of 1924).

In 1939 and again in 1940 the State Judicial Council likewise recommended that the text of certain sections of the penal law be brought into harmony with the Children's Court Acts by removing inconsistencies in language and deleting such portions as had become definitely obsolete. (1939 Report, pp. 325-330; 1940 Report, p. 52). Specifically, the Judicial Council suggested the repeal of Sections 2194 and 2184, substituting for the latter a new Section 2184, as follows:

"Judgment in cases of juvenile delinquency. When a child under the age of sixteen years is adjudicated to

be delinquent, as defined by section twenty-one hundred and eighty-six of this chapter, the judgment of the court shall be as prescribed by the Children's Court Act.

"The provisions of title two of article seven of the Social Welfare Law shall govern the commitment of juvenile delinquents to state training schools".

The Legislature did not enact this amendment in 1940 or 1941. We urge that this change in the penal law be made at this time, because it is in line with the attempts of this Committee to harmonize and to bring into conformity with one another all the laws relating to proceedings in children's courts. After forty years of a non-criminal dealing with children's problems in special courts, we believe there is no longer any valid reason for carrying in our penal law any vestigial reminders of an outmoded primitive attitude toward children.

To this end we submit a bill embodying this recommendation.

An Act TO AMEND THE PENAL LAW, IN RELATION TO JUDGMENT IN CASES OF JUVENILE DELINQUENCY, AND REPEALING EXISTING SECTION TWENTY-ONE HUNDRED AND EIGHTY-FOUR AND SECTION TWENTY-ONE HUNDRED AND NINETY-FOUR OF THE PENAL LAW RELATING THERETO

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The penal law is hereby amended by inserting therein a new section, to be section twenty-one hundred and eighty-four, to read as follows:

§ 2184. *Judgment in cases of juvenile delinquency. When a child under the age of sixteen years is adjudicated to be delin-*

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

quent, as defined by section twenty-one hundred and eighty-six of this chapter, the judgment of the court shall be as prescribed by the children's court act.

The provisions of title two of article seven of the social welfare law shall govern the commitment of juvenile delinquents to state training schools.

§ 2. Existing section twenty-one hundred and eighty-four and section twenty-one hundred and ninety-four of the penal law are hereby repealed.

§ 3. This act shall take effect September first, nineteen hundred forty-two.

With the introduction of the amendments necessary to bring these statutes into conformity with one another, this Committee feels that it has done all that lies within its power to insure equality of treatment to the children of the State who come before our courts. Even with the passage of these amendments, differences in administrative set up and in personnel will continue. These matters do not depend solely on legislation and they are therefore excluded from our further consideration here. Adequacy of facilities for investigation and treatment of children's cases, is a matter for which the various counties and the Executive Departments of this State must assume responsibility as well as for the translation of these legislative enactments into practice and their proper interpretation.

It is our earnest hope that as a result of the efforts of this Committee, courts and their probation staffs, as well as governmental and private agencies of all kinds, no less than the public generally may be encouraged to expand their interest in the problem of the delinquent child in all the counties of our State.

PART THREE

CHAPTER **V.** THE ADOLESCENT*

By his characteristic physical and emotional differentiations, no less than by the nature and number of the offenses which he commits, the adolescent distinguishes himself from both the child and the adult. Case studies of delinquents and non-delinquents demonstrate that the teen years represent a period of strain. Even the average adolescent finds it difficult to strike the proper balance between his own inner demands and urges and the requirements of the larger society about him of which he is becoming daily more aware. To the deprived adolescent in an unfavorable environment these years are frequently marked by criminality as one way of securing satisfaction, as one attempt to resolve inner conflicts.

It is impossible here even to summarize the vast literature which has grown up about the problem. While our interest is limited to the adolescent who commits an offense, is apprehended, brought into court, and, perhaps, detained in jail, placed on probation or committed to an institution, we cannot overlook the age period through which he is passing. It is not enough simply to state that the adolescent of sixteen, seventeen, or eighteen years is deserving of special care by our courts and institutions. This belief can be—and is—confirmed by the growing evidence from many fields of scientific knowledge, that the youth of these ages is not yet fully mature, not yet fully adult. Our courts and

* Numbers appended to statements in this chapter refer to the source bibliography to be found on pp. 91 and 92.

institutions must take cognizance of these facts, and so alter their procedure as to make special provisions for the youth group.

Some Definitions

The concept of adolescence was little known until the publication of G. Stanley Hall's famous study, which examined the evidence from many fields.²² Since then the term "adolescence" has become the equivalent of instability, variability, and conflict.

Says one authority: "Adolescence literally means growth, but as the term is used in biology and psychology it defines the period of human development from the beginning of puberty to the end of the maturation process. Its chronological boundaries vary with race, climate, nutrition, social status and inheritance and may include some individuals as young as eight and others as old as twenty-five. The significance of the growth rate in the life of an individual cannot, it appears, be stated accurately in terms useful for education, but there is a growing conviction that the period of infancy and childhood should be surrounded by special immunities and protection, and that its prolongation has significance for the more complete higher evolution of human beings."¹⁸

A more precise definition is found in the following: "Adolescence is the period of growth that intervenes between mere childhood and complete adulthood. Adolescence extends from about the age of 12, when premonitory mental symptoms of puberty appear, to about 25 for males and 21 for females when the productive powers are ripe. The term was formerly restricted to the latter part of this period (from 18 to 25) but later writers have followed a suggestion of Clouston (Clinical Lectures on Mental Diseases, Philadelphia) that the term should be extended so as to cover the entire transition. The phenomena of these years, 12 to 25, display a sufficiently definite progression to justify a subdivision of the period into early, middle and late adolescence; the middle subperiod covering the two or three years from about the age of 15 during which the transition is most rapid and the mental life most inchoate."¹⁹

All of the authoritative descriptions or definitions of this period agree that adolescence is clearly distinguishable from both childhood and adulthood, and that consequently the adolescent should be treated in special ways. As but one instance, we cite the fact that the English Prevention of Crime Act of 1908, divided all minors into children under fourteen, young persons between fourteen and sixteen, and "juvenile adults" between ages sixteen and twenty-one.

Physical Factors in Adolescence

From the field of physiology comes a wealth of evidence that adolescence is a period of change. Important for our purposes is the finding that adolescence does not begin at the same chronological age for all normal boys and girls. Even at age eighteen the growth in the human organism is by no means fully complete. During these years "the annual rate of growth in height, weight and strength is increased and often doubled and even more".²¹ Between the years of fifteen or sixteen, and eighteen, the final period of slow growth is observed.³⁰ Not only is there an apparent difference of about a year in physical development between youths brought up in the city and in the country, but even more striking differences appear between individuals—"There is more difference between individual and individual during adolescence than during the first twelve years of life, and this is true of all the aspects of development, both physical and mental".¹⁷

Based on a series of physical measurements on approximately 3,500 school children, three New England investigators established that a skeletal age of eighteen years, eleven months represents skeletal maturity for boys, and sixteen years, five months represents a corresponding maturity for girls.¹⁵ Up to that point, these young people were still developing, still adding to and strengthening the underlying bony framework.

The concept of anatomical or physiological age as opposed to chronological age was first stressed by an early worker in the field of child growth. "... all observations, records and inves-

tigations of children, whether pedagogical or medical, social or ethical, must regard physiological age as a primary and fundamental basis".¹²

This is, in fact, the basic concept of the children's court, even though its jurisdiction is limited by chronological factors. Variations from the norm displayed by young, growing persons, are, however, the rationale for bringing under a jurisdiction other than the purely criminal, those youthful offenders who are deserving of special treatment by reason of their immaturity.

We quote only two applications of the concept of physiological age mentioned by Baldwin, editor of the standard work in this field: "A careful analytic study of the periods of growth of boys and girls should precede any provisions for their physical education, and the results of such study will throw light on their development in general motor coordination, and in the mental traits which accompany, directly and indirectly, rhythmic or irregular physical development". . . As to social adjustment, Prof. Baldwin has this to say: "That there is a direct relationship between social age and physiological maturity needs only to be mentioned to be evident. Some girls at a given chronological age are sufficiently mature to meet the social conditions which may arise, while others are not. It is apparent that in dealing with children, especially delinquents, between ten and eighteen years of age, there is a tremendous problem involved which rests directly on the physiological age of the individual. Girls face the problem earlier on the average than do boys. In a particular case it may mean a social misfit for life with another child involved, or the individual may be subject to remedial social training and development".²

A wide variety of indices have been employed by which to determine not only developmental norms for use in studying individual adolescents, but also for the determination of the stage at which a particular individual has arrived: growth curves, the ratio between height and weight,³ strength of the grip of the hand,³⁴ successive stages of bone development,²⁷ dentition,⁹ the age distribution of pubescence in boys and of physiological maturation in girls.¹²

The importance of the adolescent changes which these various measurements attempt to gauge is well stated in a report of the White House Conference on Child Health and Protection: "It is not generally recognized what profound changes are taking place in the individual both physically and mentally during this period. Not only is there a sudden spurt in growth but a certain instability in the relationship of the various organ systems appears at this time. However, because of the comparatively large size of the boy and girl at this age, physicians have usually thought of them as practically mature and have treated them very much as adults. Such information as we now possess clearly shows that this point of view is unsound and that further studies of the period of adolescence are essential to complete our knowledge".⁴³

A youth's health and weight can be determined with accuracy, but we cannot from these measures determine at what stage he is on the road to maturity. Some of the characteristics of adolescents—and this refers as much to the intellectual and emotional as to the physical—mature in some cases "by leaps and bounds, in others by more gradual evolution".⁴⁶ Despite the wide divergences in the development of youths however ". . . our social conventions compel a child to fit himself into a scholastic, intellectual and social environment based upon his chronological age".⁴⁴

The concern of adolescents with their bodily development, and the influence of that concern has been described by many workers in this field. Says one: "The great majority of adolescents are inclined to be concerned with the normality of their physical status . . . and the absence of clear-cut norms in the realm of adolescent physiology merely adds to their uncertainty".⁴ Despite these individual differences, however, it has been established that young people are postpubescent in the greatest majority of instances at age seventeen years and nine months. The difference between the attitudes and interests of pre-pubescent girls and boys and those who are fully mature sexually, physiologically speaking, is demonstrated by the interest which each sex begins to display in the other, as well as by the imaginative and

day-dreaming activities in which they engage during these years.³⁰ The number and type of sex offenses committed by youths during this period is but one evidence of a newly awakened interest paralleling the approach of full maturity. Many writers have pointed to the fact that youths are in many instances "... capable and ready for homes of their own, (yet) there is no way to manage this because of the delay occasioned by economic conditions".³²

This same writer states further that the extreme accelerations and retardations in the growth of particular organs, results in an uneven distribution of growth for the individual. This lack of uniformity in organic development described by one physician as "asymetrical growth", makes far-reaching demands upon the adaptive capacity of the individual, and is at least partially responsible for the susceptibility of youth to disease.

As puberty approaches, most of the diseases to which childhood is most prone, decrease, while rheumatism, disorders of bones, muscles, nerves, heart and circulation tend to increase. Youth becomes liable to characteristic adult diseases, often in simpler form with less involved symptoms.

From a recent study cited above, we learn that tuberculosis alone accounts for one-fourth of the deaths in the age range fifteen to nineteen, based on 1932 statistics for the more important specific causes of death among males and females aged ten to fourteen, and fifteen to nineteen, for the United States as a whole. Girls between the ages of fifteen and nineteen died three times as frequently of tuberculosis as did those aged ten to fourteen; for boys the corresponding figure is three and one-half. Boys between fifteen and nineteen died twice as frequently of lumbar pneumonia as boys in the age group of ten to fourteen; only for bronchial pneumonia was the contrary true.¹⁵ These findings are confirmed in "Recent Social Trends in the United States".³¹ One investigator describes a special kind of mental disease which he calls "phthisical insanity" ... beginning during or just after adolescence, when he believes the body is in a state of reduced nutritive condition favorable to tubercular infection.¹⁰

Certain other susceptibilities on the part of youth to specific

pathological conditions have been indicated by students of the problem. An ophthalmologist states his belief that many of the weaknesses and other eye troubles peculiar to puberty actually originate in the sexual modifications of that period, particularly among girls.¹³ It is a familiar fact, that children who apparently recover from an original syphilitic infection which appears soon after birth may at the period of second dentition or of puberty show renewed manifestations.⁸ Hall concludes: "The germs of death are now taking root like tares among the forces of the budding vernal life; all this makes adolescence a process of assay and ordeal. . . ." ²²

Emotional Adjustment and Imbalance

Material on the emotional life and attitudes of youths in mid-adolescence is not so ample. Such studies as have been made, however, and their number is increasing, point to the insecure emotional equilibrium of the youth period. Old ties with earlier modes of conduct break or are broken; there is less harmony and less complete coordination; a conflict frequently occurs between a desire to run from difficulties—the childish response—and the will to stand and fight back; new urges, stronger desires, arise together with a greater capacity for their expression; a pull between old habits of behavior and the more recent drives toward adventurous, even reckless, self-expression appears. In short the "storm and stress" with which youth strives to leave childhood behind and to gain admittance into the adult world, defines the time of adolescence and sets it apart from other age periods.

A study in the excellent Iowa Child Welfare series based on four groups:

- 76 boys and girls in state training schools,
- 31 adolescents in a state home,
- 200 "normal" adolescents in a large city high school,
- 90 "normal" adults,

presents several conclusions of interest. The first of these has found general acceptance by workers in the field of mental

hygiene, namely that: "Abnormal behavior is the uncontrolled manifestation of the same temperament which actuates the normal individual". Lack of integration and balance, typical adolescent characteristics, are thus seen to be important governing factors in anti-social conduct. Comparing the non-delinquent or "normal" adolescents with the adult group, it was found that the former were more oscillating and paradoxical in their feelings and actions. They were more rebellious, suspicious, intolerant of others; overly enthusiastic; they liked more excitement; were more prone to depression, self-consciousness, oversensitiveness; also they doubted the veracity of others and employed more escape-mechanisms. Delinquent girls showed more evidences than non-delinquent girls of feeling unworthy and having guilt complexes; were restless, prone to nervous upsets; had a day-dream life; were outspoken, intolerant, suspicious and apprehensive of others, and preferred to work alone.²⁶

The adolescent in general, who is without the benefit of experience of living, shows extreme temperament manifestations toward his training, in his desire to be removed from "the leash". He has a low normal or balancing component to offset his other extreme characteristics. The personality imbalance characteristic of young persons in this period approaches in many instances the "pre-psychotic" syndromes, and consequently they may be wrongly diagnosed as such.²⁹

An interesting investigation of 200 boys, twelve to fourteen years of age at the beginning of the research, who were studied systematically for two years, gives results which are important for an understanding of the emotional life in the mid-period of adolescence between years fifteen and eighteen.

In the course of the two-year period of observation, it was possible to discern the changes that took place in these boys, paralleling their pubescent development. The diminishing activities of these boys as they became older were noted as: sleep, participation in physical play, eating, club activities, etc. The decrease in the amount of time devoted to sports or physical play was coupled with an increase of the spectator role. The most provocative finding for our purposes may be the rapid reduction

discovered in the amount of time utilized by these youths for organized group activities, in scout-troops, clubs, classes in churches, Y.M.C.A.'s and settlements. Only one-quarter of the sixteen year olds investigated, continued any club participation, while at the beginning of the study nearly all of the boys belonged to some group.

The study found that the greatest shift during the four years from fourteen to sixteen was in the realm of self-criticism. This increased self-analytical attitude is in line with the fact that the adolescent is becoming more aware of himself in relation to others. Some growth, though slight, was registered during the four years in social insight and in the tendency to be critical of others. The author answers the question: Are we justified in denying or belittling the role of physiological growth and maturation in the development of the individual and swinging to a thoroughgoing position of social or environmental causation, with the statement: The development of the individual adolescent is conditioned by factors both within and without himself.¹⁴

The endocrinologist and the behaviorist have much to contribute to an understanding of the emotional life of adolescents. The fact that the emotions are so closely connected with visceral and glandular activities makes it apparent that, with the maturation of the sex and related glands, there will be a stronger tendency toward the love attachments and emotional manifestations associated with the adolescent. In this tendency, probably the powerful social drives of adolescents, and their extreme loyalty and ideals, play an important part. Concerning anger, it is fair to say that the idealistic nature of the adolescent is likely to carry his anger too far, at the same time that fear as a means of control loses its influence.⁴²

Nor can the importance of habits as drives to action by the adolescent be overemphasized. Habits of a social nature are in their formative stage during the later years of adolescence; these are at the same time influenced by changes in the emotional life during this period. "With adolescent growth and development, emotional drives become more powerful; emotional disturbances are more in evidence, and more complex emotional states of a social nature develop."²⁰

The phenomenon of self-assertion before the opposite sex during these years is well known: "It is certainly clear that in order to reach normal adult stature the adolescent must pass during the adolescent period, from early lack of sex consciousness to a state characterized by the exact opposite, namely, sex consciousness, and then to the state of attraction to the opposite sex. This last is the state when in ordinary parlance the boy is in varying degrees "girl crazy" and the girl, in some measure, "boy crazy."⁶

The high emotional tension at adolescence is explained in other terms by another writer as "due in part to the function of the endocrine glands which has changed markedly with the introduction of the hormones from the gonads. It is highly probable that changes in the hormones from the gonads have produced a difference in adrenal gland function, and that since the adrenal gland seems to have so great a relation to the emotions, an unusual tension is the result. This is all the more probable since there appears to be a fundamental relation between adrenal gland secretion and the development of the secondary sex characteristics."⁷

This same writer interprets the insecurity of the adolescent as "fear in a generalized form and without the more profound changes in pure fear states." Insecurity during this period may reach such a height that the escape mechanisms are increased far beyond the normal point. In order to help meet this situation, the adolescent needs a security which is subconscious as well as conscious: superficial reassurances will be found to be wholly inadequate in dealing with him. He needs to know that he is secure in the acceptance of those he loves.

Many authorities are agreed that during adolescence, ambivalence representing a rapid emotional swing, seems to occur rather more frequently than at any other time.

It is difficult to determine just what is meant by emotional maturity, as to fix the precise point at which a person ceases to develop in emotional power and control. Yet the answers to these problems are of great importance in our understanding and treatment of adolescents. One psychologist, drawing upon anthropological sources, notes that in primitive initiation cere-

monies, some tribes made "capacity to suffer" a frequent test of the maturity of its youthful members.²⁵ Ordeals consisted of mental and physical hardships, and the young person who refused to undergo them, or who yielded to fear or pain, or cried out, was considered to have failed the initiation. The entrance of these into full membership in the group was refused because they were considered to be immature, childish, not yet ready for adult responsibility. It is to be noted that many of the offenses committed by youths are in response to dares or other spurs by those older than themselves. Many instances may be cited of a hierarchy of offenses which youthful aspirants to gang membership must commit before they may be considered full-fledged accomplices to their older leaders.²⁴

We know that emotional control comes with years and experience, by increased power from within, to help withstand external pressures. However, it is believed by many psychologists that emotional maturity is perhaps more influenced by training and circumstances than is any other phase of development. The ultimate courage and patience of a person is in the last analysis determined by what happens to him during immaturity.

Finally, we note that the suicide curve rises during adolescence, but on the other hand there is evident also a new and offsetting horror of death not felt before.

The Factor of Intelligence

The relation of the factor of intelligence to social adjustment is of great importance for an understanding of the problems of adolescents—delinquent youths, as well as those who do not come before the courts. In any such discussion, we must clearly distinguish between mental ability or intelligence on the one hand and mental content or knowledge on the other.

Intellectual growth, like physical growth begins at conception and continues until some point in late adolescence. Psychologists do not agree on the precise point at which the growth of intelligence ends. Psychometric studies show a rise of the curve of mental power to the age of about sixteen years on the average,

and little if any rise thereafter. Among adolescents of superior intelligence as a group, such as are to be found in high schools, improvement has been noted in scores on intelligence tests up to eighteen years, and it has not been conclusively established that it ceases at that age. In this connection it is interesting to note that in the fifty years between 1880 and 1930, the high school population of this country increased from a little more than 3 per cent of the total population of high school age to almost 50 per cent.²⁸

It is during adolescence that the individual first achieves his maximum powers of thinking and planning, and the need of a constructive and systematic explanation of the universe is felt, perhaps, for the first time. Youths in their middle teens begin to display a power of generalization which is seldom seen in those in their early teens, even though the concepts in the former age group are not so perfectly formed as they will be at twenty when the abstract understanding of life is possible.³⁷ There is general recognition that the adolescent is frequently incapable of exercising complete adult judgment by reason of lack of experience, even though what we term intelligence and bodily maturity may be reaching their apex.

The difficulties which many a youth experiences during these years spring from the doubts which he begins to entertain regarding accepted customs and traditions of society in general, and particularly those of his family. Rebelliousness seen against this kind of a background can be understood as a healthy and necessary step in the mental development of the individual, even though the outward expression of the conflicts which such rebelliousness engenders are borne only with great difficulty—by those associated with him.³⁸

The adults who live and work with him must appreciate his attempts to affirm a social as well as an economic independence of all those who have—up to now—guided and trained him.³⁹

Between sixteen and eighteen, the more intelligent adolescent becomes concerned with such aspects of the world about him as the problems of creation, of death and of immortality and also in the impersonal problems of space, time, reality, infinity, etc.

He begins to think of what he will do in the future. The charting of a life plan at this point, one which is in line with his special aptitudes and abilities, which will allow for a harmonious balance of all—or almost all—his drives, is a very difficult problem indeed.

It is at this stage in his development that he requires all the help that society can give him. Dependent largely on the influences which are brought to bear upon him, his "... strivings and aggressiveness may lead in a direction of ambition and fine accomplishment, or may find outlets largely in delinquent trends."²³

These years should represent a period of continuing emancipation. "From the conception of the self as little more than a physical body possessed of strong play interests, and of the universe outside oneself as little more than a narrow horizon that hems in certain small geographic areas, the youth comes in the later adolescent period to envisage the self as a force of great potentiality. . ."²² The concern of the institutions of society is for the cultivation of that potentiality.

Social and Economic Difficulties

During the adolescent period youths face an intensification of their problems, especially those which arise from the environment, the restrictions upon their activities and their self-expression. It is not poverty itself, but the concomitants of poverty which bear down especially hard upon this age period. Overcrowded homes bring about many results especially deleterious for youth: lack of privacy, absence of recreation facilities at home, the necessity of meeting one's acquaintances, boys or girls, outside the home. The influence of a home broken by reason of separation, death, divorce or imprisonment, hard as it is upon the younger child, is perhaps more difficult for the adolescent, at a time when he needs all the anchors and all the security that can be mustered for his support.

During this age period, also, we see the cumulative effects of the over-severe or too lax discipline of earlier years, as well as the harm done by inadequate or improper educational training.

Though difficult to establish conclusively, there is undoubtedly a close and valid connection between youthful criminality and unemployment. Free from school, because he is over the compulsory age, or because he is no longer interested in or profiting from the curriculum, or because his family needs his help, the youth seeks a job. The change from school to work—or to a search for work—is bound to be unsettling. The sudden freedom and responsibilities, the demands which are now made upon him, perhaps the new found independence and the sense of earning—are bound to create new stresses and strains. Many of the jobs open to young people require little training and pay even less wages.

Until very recently, youth suffered more from unemployment than did any other age group in the labor market. During the last week of March, 1940, for example, there were two million persons in this country aged fourteen to twenty-four who were totally unemployed and seeking work. The records of the WPA, NYA and CCC show that there were over one million additional unemployed youth working at relief jobs. The burden of unemployment in March 1940 was especially heavy on youths just out of school. Less than 70 per cent of the boys and girls between the ages of fourteen and nineteen who had joined the labor force were employed on non-relief jobs, while 23 per cent of the boys and 26 per cent of the girls were entirely without work and looking for a job.⁷

We find the recent past a most critical period for young people, many of whom grew up in rural areas but were forced to migrate cityward in order to find job opportunities. Youth may be said to bear the brunt of unemployment. The transition from youth to manhood and from disciplined lessons to independence is indeed a double handicap. If in addition to this, the type and difficulty of the work are not adapted to the nature and capacity of the young worker, and if his co-workers are uncongenial or set a bad example, the youth's natural restlessness and instability will indeed be sorely tried.

Civil Restrictions

In addition to these handicaps, the youth who is out of school and looking for work, finds himself under other disabilities. He may be barred from entrance into some trade unions until he has come of age, or he may be required to fulfil apprenticeship requirements. Sixteen and seventeen year olds must have working papers before they may take jobs as errand boys or in any other employment. Youths under eighteen are protected by wage and hour laws.⁴¹ They are also excluded from certain dangerous occupations, because of their greater liability to accidents. To date, five such occupations in inter-state commerce have been declared to be hazardous under the Fair Labor Standards Act of 1938: in the manufacture of explosives, in motor-vehicle operation or assistance, in coal mines, in logging and saw-milling, and in any occupations involving power-driven woodworking machines.⁴⁰ Studies of the hazards of the ship-building industry and the special danger to health connected with radio-active substances may soon lead to orders in these fields as well.⁴⁵

Membership in organizations of all kinds, leadership in clubs, admittance to theatres and to educational institutions, enrollment in political parties, qualification for police, fire, teaching and other public employment, the right to vote, to run for office, serve on a jury, or hold property are limited in one way or another by the rigid factor of age.

The basis of certain of these civil law restrictions is found in the fact that at common law the age of which an infant reaches full majority is fixed at twenty-one years, whether male or female. In some jurisdictions the age of majority as to females, at least for some purposes, has been fixed by statute at eighteen. An infant or a minor, deprived of parental care, control and oversight is considered as a person under a certain disability, and may in certain circumstances become a ward of the state. This power is not an unlimited and arbitrary one and is exercised only for the welfare of the child. Such legislation is beneficial and remedial, not criminal, in its nature and is entitled to favorable and liberal construction. At common law, infants do not possess the same legal rights as do adults.

Generally speaking, an infant may acquire property rights, but he is not regarded as capable of managing his property, and the law therefore places it in the hands of a guardian. Nor may any contract made by him in infancy bind him after he comes of age unless he ratifies it at or after that time.³⁵ The armed forces in peace time have definite age requirements for young persons desiring to enlist.

Parental consent for marriage is required for boys under twenty-one years and for girls under eighteen. The minimum age at which marriage licenses may be legally issued, if the parents consent without awaiting a special order from a judge of a designated court, is sixteen years for boys and fourteen years for girls in New York State. There are indications that in time, rising standards will lift both of these minimum ages.³³

Corpus Juris, in its restatement of the entire American law, adds to this enumeration of restrictions as to adolescents: "While at common law an infant who had violated the criminal law was generally treated as an adult, it is contrary to the spirit of modern penology to impose upon juvenile offenders, whose need is reclamation and reform rather than punishment, the penalties intended for adults."¹¹ This same criticism may of course be levelled against the entire administration of the criminal court procedure in relation to adolescents.

Regarding the broad gap between the protective restrictions of the civil law and the rigors of the criminal code, a final word may be quoted from the sociologist: "That half-grown group of biologically mature and physically semi-mature children whom we designate as adolescents represent one of the most puzzling and least understood problems in our population. Their unstable relationship to the rest of society arises in part out of the uncertainty of their status. Thus the state law protects the minor in his exercise of immature judgment in the field of contracts but leaves him open to harsh penalties in connection with the exercise of immature judgment in matters of morals and ethics."⁵

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Criminality of Youth

We present here a statistical review of the contribution made by the youth group to the problem of crime in this State. The figures which follow have been drawn from many sources, chief among which are:

1. Evidence placed before the Committee by witnesses;
2. Reports of the New York State Department of Correction; other State and Municipal Departments; statistics of the New York Crime Commission;

3. Prof. Thorsten Sellin of the University of Pennsylvania who has kindly given us permission to quote from his excellent study, "The Criminality of Youth", published in Philadelphia in October of 1940.

AS TO NEW YORK STATE. The average age of all those arrested for major offenses in this State in recent years was twenty-seven. This average showed little variation during the six years 1932 through 1937. There is no evidence to support the widespread belief that the average age of adult criminals has declined in recent years. The following figures seem to indicate, however, that while youths do not predominate in the commission of all offenses for which arrests are made by the police, they nevertheless seem to contribute a disproportionately high percentage of the really serious offenses.

In the five years from 1930 through 1934, 23.5 per cent of the arrests for major offenses of persons above fifteen years of age were of youths between the ages of sixteen and twenty-one. Breaking this figure of 23.5 per cent down according to the type of major offenses, it is noted that youths in the age group sixteen to twenty account for almost one-third (32.4 per cent) of all robberies in the State, almost one-third (30.5 per cent) of rape offenses, over two-fifths (42.9 per cent) of all burglaries and one-half (50.8 per cent) of all auto thefts. These four offenses alone account for over 40 per cent of all arrests for serious felonies in the State over this four year period.

In fifteen cities of New York State of a population over 40,000 each (not including New York City) over one-third (35.8 per cent) of those arrested for felonies were between the ages of fifteen and twenty-one.

For the entire State of New York in the calendar year 1939, there were 11,924 convictions for major offenses, that is, primarily felonies. Of that number, 3,232 (27.1 per cent) were of youths between the ages of sixteen and twenty-one.

Based on arrests for major offenses per 100,000 of their sex and age group in the total population, each year from 1932 through 1938 shows that the nineteen year olds in this State contribute—or at least are arrested for—the largest proportion of major offenses of any single age.

Those twenty years old had a higher rate of arrests for major offenses than the sixteen to eighteen year old group for the years 1932 through 1935, but in 1936, 1937 and 1938 the proportion of major offenses for which the sixteen to eighteen year group was arrested exceeded that of the twenty year olds.

Using the same base—that is, 100,000 of each age group in the general population, the years 1930 to 1934 disclose that the sixteen to nineteen year olds lead all other groups in arrests for burglary and auto thefts (666 and 425 per 100,000 respectively), while the age group sixteen to twenty leads all others in arrests for certain serious offenses—listed in the following table—2096 per 100,000 of their age group in the total population.

Statistics of arrests are admittedly questionable in many ways as indices of criminality; their chief value is as complementary data to more reliable sources. Nevertheless, when rates of conviction are substituted for rates of arrest, the sixteen to nineteen year old group is shown to have the highest conviction rate for burglary, for offenses against Section 552 of the Code of Criminal Procedure (unlawful entry; possessing burglar's tools; carrying or possessing dangerous weapons; aiding escape; pickpockets and jostling; unlawful possession or distribution of drugs) and for other serious misdemeanors. This same age group is also convicted for serious offenses in a higher proportion—1486 per 100,000—than any other four year age grouping.

The sixteen to twenty year old age group is convicted of robbery, rape, and automobile theft in the highest rate per 100,000 of any four year age-span in the population. From the twentieth year on, the rate of arrest—and of conviction—appears to drop steadily.

The following table shows the total number of youths sixteen through twenty years of age who were committed to State, County and City penal and correctional institutions:

N. Y. State Prisons and Reformatories	9,942
N. Y. City Penal Institutions and Jails	103,344
County Jails	68,410
County Penitentiaries	6,090
<i>Grand Total</i>	<hr/> 187,786

THE ADOLESCENT

These figures include persons remanded for trial as well as those sentenced, as far as the New York City institutions and the county jails are concerned. All adult penal and correctional institutions are included, with the exception of those for insane and defective delinquents, and not including Federal prisons in the State.

The proportion which the commitment of the group sixteen through twenty years of age bears to the total commitments in these institutions for the ten-year period is as follows:

1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	10 Yr. Average
14.7	15.9	15.2	15.2	12.2	12.1	11.0	11.7	11.9	11.7	13.2

Based solely on commitments to State Prisons and Reformatories and County Penitentiaries (which excludes detention and remand cases), these same percentages for the same decade become:

1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	10 Yr. Average
12.9	10.7	13.0	12.8	11.3	12.1	10.9	10.8	15.2	14.4	12.4

In other words, while the total unselected figures for all institutions seem to show a slight reduction in the percentage of youths committed there, the omission of other than sentenced cases shows little change. The only deduction which may be drawn from these rates—and that tentatively—is that there has been some little decrease in the numbers of older adolescents who are detained in city and county jails.

During this ten-year period, youths sixteen through twenty composed the following percentage of the total commitments:

State Prisons and State Reformatories.....	30.7
New York City Penal Institutions and Jails.....	12.5
County Jails	13.8
County Penitentiaries	6.3

The seriousness of the offenses committed by this age group is reflected in the fact that youths comprise almost a third of the inmate populations of our penal institutions of last resort.

A study made of prisoners paroled in 1938 who were known to have had previous arrests showed that more than a third of them were first arrested between the ages of sixteen and twenty.

AS TO NEW YORK CITY. Coming now to the picture of youthful criminality in New York City, we see in 1929, according to a special study by the Crime Commission—that while the arrest rate for serious charges in the entire male population was 3,960 per 100,000 population, this rate rose to 4,780, among adolescent boys aged sixteen to twenty, an increase of slightly more than 20 per cent. "Crimes involving danger, violence, adventure and thrill were primary among those ascribed to youths"—more than one-half of all arraignments were for auto theft, almost a third for burglary, and a quarter for robbery. Rape was also a common offense for which members of this age group were arrested.

In the year 1936 the number of youths between the ages of sixteen and twenty arrested for all offenses composed only 4 per cent of all those charged with offenses by the police. (If motor vehicle violations are excluded, this figure rises to 6.6 per cent.)

Yet in that same year, 1936, youths from sixteen to twenty years were arrested for:

- 10.7% of all extortions
- 13.3% of all larcenies from the person
- 15.1% of all destruction of property
- 22.3% of all sneaks from buildings
- 24.7% of all robberies
- 39.2% of all larcenies from highway, vehicle, etc.
- 39.6% of all unauthorized use of property (auto theft)
- 42.0% of all burglaries

In 1939 the percentage of youths in the same age group arrested by the police had decreased from 4 to 1.8 per cent—less than one-half of what it had been in 1936. Many factors may be cited to explain this fall. Nevertheless, the contribution of youth to cer-

tain serious offenses had increased, noticeably in all but two of these same offense categories as follows:

- 8.1% of all extortion—a decrease of 2.6%
- 14.9% of all larcenies from the person—an *increase* of 1.6%
- 18.6% of all destruction of property—an *increase* of 3.5%
- 19.6% of all sneaks from buildings—a decrease of 2.7%
- 29.2% of all robberies—an *increase* of 4.5%
- 46.4% of all larcenies from highway, vehicle, etc.—an *increase* of 7.2%
- 53.1% of all unauthorized use of motor vehicles—an *increase* of 13.5%
- 47.5% of all burglaries—an *increase* of 5.5%

In other words, according to the official statistical reports of the Police Department of New York City, while the percentage of youths arrested for all offenses during the year 1939 dropped to less than one-half of what it had been three years earlier, this same youth group had increased their contribution to the really serious offenses, and were responsible for almost a full fifty per cent of all larcenies from vehicles, auto theft, and burglary. Again, this conclusion must be viewed in the light of the fact that arrest figures are less reliable than other crime indices. Nevertheless the finding is of interest.

In a recent letter to this Committee, the District Attorney of New York County is authority for the statement that in the three years prior to 1940, "approximately 60,000 criminal cases have been handled by my staff. Nearly one-quarter of the defendants in these cases were between sixteen and twenty years old."

During the two years 1937-38, the Police Department of New York City reported 2,880 arrests of sixteen year old youths. Of these:

- 116—or 4.0 per cent were arrests for robbery
 - 466—or 16.2 per cent were arrests for larcenies from the person by stealth
 - 542—or 18.8 per cent were arrests for burglary
-
- 1,124 *total*

YOUNG PEOPLE IN THE COURTS OF NEW YORK STATE

In other words, sixteen year old youths who were taken into custody by the police, were, in two-fifths of the cases (39.0 per cent) charged with the commission of serious offenses against property.

UPSTATE. The Judge of Cattaraugus County submitted a statistical analysis of the records of his Court from January 1, 1938 to May 5, 1941, a period of forty months, during which time there were 221 convictions of all ages. Of these, 91 were convictions of defendants from sixteen to twenty years of age, for the following offenses:

Burglary	55
Robbery	8
Attempted Robbery 1st degree	4
Grand Larceny	15
Forgery	5
Attempted Extortion	1
Sodomy	1
Criminally receiving stolen goods	1
Arson	1
<i>total</i>	<u>91</u>

Breaking the total figures down by single ages, we find that there were:

15 convictions of those aged 16
24 convictions of those aged 17
18 convictions of those aged 18
15 convictions of those aged 19
19 convictions of those aged 20
<i>total</i> <u>91</u>

In this county, two-fifths (41.2 per cent) of all the convictions for criminal offenses in a period of almost three and a half years were of young persons in the ages sixteen through twenty.

THE ADOLESCENT

In the City of Buffalo, in recent years, the following numbers of youths were arrested:

YEAR	<i>Aged 16</i>	<i>Aged 17</i>	<i>Aged 18*</i>	<i>Total</i>
1938	249	254	401	904
1939	231	241	337	809
1940	218	267	384	869
3 year average	229	251	374	861

* Includes traffic violations.

The type of offenses committed by these youths resemble those committed by delinquents aged fourteen and fifteen. Burglary is the most prevalent charge, followed by assault, disorderly conduct, petty larceny, injury to property, and unlawful entry. The increase in the eighteenth year is very marked. An examination of the prior records of arrested young persons sixteen, seventeen and eighteen years old shows that in 1938 approximately 18 per cent were previously known to the Children's Court; in 1939, 15 per cent; and in 1940, 22 per cent. No inquiry was made into the length of time the youths arrested in the age groups sixteen through eighteen had resided in Buffalo: it is fair to assume that some proportion of them were newcomers to the City, and it is entirely likely that of these, some had appeared in juvenile courts elsewhere.

This finding is reminiscent of the statement in "The Youthful Offender", published by the New York State Crime Commission in 1931: "that each year brings to our courts a substantial new group of offenders, whether the major group of the offenders of the previous year ceased criminal conduct or whether they merely avoided being caught is a matter for conjecture" (p. 110).

NATIONALLY. It should not be thought that New York City or New York State stands alone in the number and nature of the offenses committed within its borders by youths in the upper teen ages. The problem may well be described as national in its scope: the degree of attention and study which it is receiving at the hands of all kinds of local and national bodies is an indication of the

seriousness with which certain factors regarding the adolescent offender are being considered.

Taking the country as a whole, young people between the ages of sixteen and twenty-one compose 13 per cent of the total population over fourteen years of age. This same age group contributes 20 per cent of our criminals: one and one-half times their proportion of the population. In one year, 50 per cent of all auto thefts, 40 per cent of all burglaries, almost 30 per cent of all robberies, and over 20 per cent of all other larcenies were committed by youths who were too old to come into the juvenile court, and yet not old enough to vote.

Youths come before our criminal courts for serious offenses twice as often as do adults thirty-five to thirty-nine years of age, three times as often as those from forty-five to forty-nine, and five times as often as those from fifty to fifty-nine. Of all those arrested throughout the country for all types of offenses, as reported to the Federal Bureau of Investigation during the first six months of 1937, the largest age group among those arrested for robbery was 19; for burglary, 17; for larceny and theft, 18; and for auto thefts, 18. Records of the Federal Department of Justice covering the first nine months of 1940 indicate that persons nineteen years of age were most often arrested. For the same period in 1941, the Department reports that 31.3 per cent of the total fingerprint records received were of persons less than twenty-five years of age, with youths of nineteen again leading in frequency of arrests.

From Thorsten Sellin comes the assurance that "youths dominate in serious offenses against property—in turn the vast majority of all serious crimes—that appear to be more habit-forming than other forms of criminal conduct" and that "the proportion of first offenders is extraordinarily high in the youth group compared with later age groups", from which he concludes: "there is every reason to assume that a person who begins his delinquency in youth or who continues his career as juvenile delinquent into the youth period is much more exposed to the hazard of recidivism than are those who begin their criminal careers later in life. If this conclusion is sound, adequate treatment measures for the

youth group are needed, and if they can be made successful, the offense rates of later age groups should in the course of time show considerable decline."

Conclusion

There are those who see in the seriousness of the offenses committed by the older adolescent offender grounds for dealing more harshly with him, for imposing a degree of punishment and a type of approach which would leave no room for the protective and understanding philosophy and procedure of the juvenile court, which, in modified form, is the essence of the adolescent's court procedure. The Committee is happy to say that it does not share this opinion in any degree. Just as surely are we opposed to the sentimentality of those who would put the welfare of the individual youth above the necessity for protecting society. In the last analysis, there is no conflict between the state's desire to see its citizens protected and its parental interest in the health and normal development of its young people. We believe that when the state aims at the rehabilitation of its erring youth, it is aiming also at the surest protection of society in the long run.

The state has in the past tried many forms of dealing with the problem of criminals, including youthful criminals. "Cruel and unusual punishment"—branding, whipping and transportation overseas—were still found in the United States, England, and the British Colonies, as recently as 1840. The growth of the reformatory movement of the middle nineteenth century paralleled the growing realization that punishment had little deterrent value on the population generally and was little more effective with those who had already violated the law. The State still has its choice of many attitudes and procedures which it may apply in its handling of the criminal elements within its midst, but if we have learned anything from the experience of the first half of this century, in which the humanitarian philosophy of the 1800's has been worked out in practice, it has been this one lesson: that the welfare of society is safeguarded most surely through the rehabilitation of those who run afoul of the law and who are committed to our

treatment and training institutions. Side by side with the growth of the preventive viewpoint, these years have seen the growth of an attitude on the part of professional workers that no form of treatment so surely guarantees the future law abidingness of these criminals as rehabilitation based on the particular needs, problems and antecedents of the individual offender.

What is required now is the universal adoption of these principles in all of the agencies—the police, the courts, and beyond—which deal in any way with youthful offenders. Like the growth of any bit of social philosophy, the development of the rehabilitative non-punitive approach has been slow and spotty. Each new “crime wave” created or discovered, each fresh atrocity headlined in our daily papers is sufficient to release a wide protest on the part of certain elements in our population that we are coddling those who break our laws. We must nevertheless go forward, realizing that the state is, in effect, more lenient with its law breakers when it punishes them harshly and returns them unchanged to the community than when it takes strict reformative measures which will insure, to some degree, that the offender has been compelled—or coerced—to undergo some fundamental change in attitude and ways of behavior.

CHAPTER VI. THE "LESS THAN ADULT"

OFFENDER IN OTHER JURISDICTIONS

The findings and estimates of the preceding chapter regarding the adolescent offender, are not new. For many years in this country the principle has been recognized that the young offender should not be commingled with the hardened recidivist; that because of his potentialities and promise, the adolescent was deserving of special efforts on the part of society to restore him to law-abiding ways; that an experimental attitude was best employed in reforming him.

It has been said that in dealing with the youthful offender the need is not so much for a new court or a special procedure as for a difference or modification in our thinking and in our approach to the problem. The Committee agrees that this is so, but our form of social and legal organization requires that in order for a new approach to be adopted by any agency of the government, it is first necessary to establish, by law, an instrument through which the newer ways of thought are to be applied. Our search has been for the most effective way in which adolescent violators of the law may be prevented from further wrong-doing.

Historical Antecedents of the Wayward Minor Law

The historical antecedents of the present Wayward Minor Laws may be found in laws of the eighteenth and nineteenth centuries concerning rogues, vagabonds, disorderly persons, misbehaving servants, runaway apprentices and the like.

Under the influence of European and Colonial traditions, the American poor laws of this period adopted repressive methods against certain classes of people who, while they might not be criminals, could be—and were—considered and treated as dishonest paupers. Persons of this type, after a summary criminal procedure, were committed to jails, bridewells, houses of correction, workhouses and similar institutions.

Thus, in Pennsylvania, the laws on poor relief of 1766 and 1767 provided that disorderly persons who were likely to become public charges, likewise rogues, vagabonds, idle and dissolute persons who were found loitering or residing in the City of Philadelphia could be committed by a justice of the peace to the House of Employment for a term not exceeding three months. In the rest of the Colony, such idle and disorderly persons were to be committed to the County Workhouse or County Jail.

Similarly, under two New York State Statutes of 1788 and 1813, disorderly persons could be brought before a justice of the peace and committed to bridewells or houses of correction for terms not in excess of sixty days. This category included persons who threatened to run away and leave their wives and children a burden on the town; persons, who not having wherewith to maintain themselves, lived idly and without employment; professional beggars, jugglers; "persons pretending to have skill in physiognomy, palmistry (sic), or like crafty science, or pretending to tell fortunes, or to discover where lost goods may be found"; vagabonds, prostitutes, etc.

Under the revised Statutes of New York of 1829, similar treatment was provided for beggars and vagrants. The latter were defined as:

"All idle persons, who not having visible means to maintain themselves, live without employment; all persons wandering abroad and lodging in taverns, groceries, beer-houses, outhouses, market places, sheds, or barns, or in the open air, and not giving a good account of themselves; all persons wandering abroad and begging . . . shall be termed vagrants".

Parallel provisions are found in the laws of other states during this same period. A Massachusetts Act of 1798 and a New Jersey Statute of 1799 give very much the same definition for vagrancy and provide for commitment in county institutions for brief periods of time.

These early laws were applicable to adults, adolescents, and children alike: The Massachusetts Law of 1798 referred expressly to—"common pipers, fiddlers, runaways, stubborn servants or children, common drunkards, common night-walkers, pilferers, wanton and lascivious persons in speech, conduct or behavior; common railers or brawlers . . ."

Laws of a more progressive type were passed in New York in 1820, 1821 and 1824. These laws distinguished children from adults and provided for their educational treatment. Children caught begging were to be sent to almshouses and houses of industry, there to be instructed in "useful labor" and to be "bound out" or "indentured" to private persons as apprentices or servants. For seventy-five years these indenture laws continued to be used. The growing practice of placing children in foster homes made these laws obsolete after the turn of the century, and in 1923 they were repealed.

These were the immediate statutory antecedents and models for the laws referring to houses of refuge (beginning in 1824) to which both delinquent and vagrant children were committed for custody and treatment.

A special category of adolescent offenders during this period included the apprentices, clerks, and servants under twenty-one years of age (or under eighteen if females), who misbehaved against or ran away from their master or mistress. We find these provisions in certain statutes of the eighteenth and nineteenth centuries which regulated in general the relations between masters and their servants or apprentices. These laws not only protected the master against misbehavior on the part of his workers, but also defended the latter against cruelty, neglect, and abuse on the part of their employers. The justices of the peace, either singly or as a bench of three, were authorized to intervene in either instance. In the case of misbehavior or disobedience on

the part of the apprentice or servant, the court could either cancel the "indenture" and absolve the master of his responsibilities, or it could impose punishment—a short term of imprisonment—or some other suitable correction, which probably meant corporal punishment.

These early laws are of interest in connection with the present wayward minor law because they emphasize a condition rather than an act in giving the court jurisdiction over certain classes of cases. The categories in the present wayward minor law are little changed from the early statutes cited above: idleness and drunkenness; association with prostitutes, thieves and other unsavory persons; wilful disobedience or stubbornness; the patterns of behavior which point the way to confirmed criminal behavior in later years. Adults are even to-day arrested for loitering, suspicious behavior, disorderly conduct and the like. The treatment of these problems is little changed in the last one hundred years—fines, short terms of imprisonment or dismissal are the usual court order.

In the treatment of the youthful offender, however, our courts have taken a more socialized attitude—the passage of the New York Wayward Minor Law in 1923, the first such law in the United States, gave to any magistrate, other than a justice of the peace, the power to deal with these cases. This statute, carried forward from earlier laws, places the emphasis upon condition rather than offense, and permits adjudication of a status rather than conviction for an offense. The adolescent who requires some supervision by the court is thus freed from the stigma of conviction for a crime.

Laws of Other Countries

The English system of Borstal Institutions for convicted offenders between the ages of sixteen and twenty-three is described in detail in a later chapter (pp. 294–304). We believe it of interest to describe here the provisions made by certain other European countries for the care and control of the adolescent delinquent. This brief summary is given for purposes of illustration: its value is chiefly an historical one at the present writing.

FRANCE. The law of July 22, 1912 regarding children and young persons in court and on probation was several times amended, finally by the decree of January 15, 1929. This last provided for the trial of children between thirteen and sixteen years of age who have committed a misdemeanor. The criminal courts were empowered to constitute themselves as special "children's and youth courts" for this purpose. Examination and hearing of the cases of persons under eighteen years of age were required before special magistrates with particular experience in the problems of young offenders and methods for dealing with them. The number of cases of children and young persons complained of violations of law fell from 24,326 in the years 1911 to 1913 to 20,733 in the five years from 1920 to 1925.

BELGIUM. The law of May 15, 1912 regarding the protection of children relates to three types: giving the courts power to remove certain children from the control of their parents; jurisdiction of the courts over offenses committed by young persons; the punishment of adults charged with offenses against the morals of children. The creation of separate juvenile courts and the placing of young offenders on probation was accomplished by the second of these three reforms.

Under Article XI of this law the King may appoint to each court of first instance a magistrate to hear the cases of young offenders. The jurisdiction of such a juvenile court judge extends to begging and vagrancy by persons under eighteen years of age and to acts regarded as delinquencies when committed by children under sixteen. The number of children brought before juvenile courts decreased from 6,009 in 1913 to 2,418 in 1930.

GERMANY. Statutes concerning the protection of delinquent and neglected children are contained in the juvenile court law (*Jugendgerichtsgesetz*) of February 16, 1923 and the child welfare law of July 9, 1922. Juvenile courts—up to 1933—had jurisdiction over all offenses committed by young persons between fourteen and eighteen years of age. Children under fourteen were not subject to the criminal law. Acts committed by them which were punishable when committed by adults, were referred

to the guardianship courts and child welfare bureaus which were empowered to take the necessary protective measures.

The number of youths convicted in the courts of Germany fell from 86,051 in 1923 to 21,529 in 1932. During the following year, these progressive measures were completely repudiated.

"Since National Socialist doctrine repudiates the conception of training or education in its penology, it was only natural that there should be suggestions for changing the rules of procedures against youthful offenders established in the law of 1923. Various reactionary proposals were made but none of them have been enacted into law". (Kirchheimer, "Recent Trends in German Treatment of Juvenile Delinquency", *Journal of Criminal Law and Criminology*, Vol. 29, No. 3, 1938).

In the period between Hitler's accession to power and World War II, the Third Reich took, in respect to the treatment of juveniles, the same steps backward toward medievalism that characterized her attitude toward other social problems. "The decree of October 4, 1939, concerning dangerous juvenile delinquents, also merits special attention. Up to the war there was some tendency to spare juveniles the harshness of National Socialist criminal policy. The new decree, however, apparently a consequence of increasing juvenile delinquency, marks a break with the previous policy. It exempts juveniles between sixteen and eighteen from the jurisdiction of the juvenile court when the culprit, in view of his mental and moral development, could justifiably be regarded as a person over eighteen, and when the offense exhibits a particularly degraded criminal character or if the protection of the community requires such a punishment". (Ibid, "Criminal Law in National-Socialist Germany," in *Studies in Philosophy and Social Sciences*, 1940).

AUSTRIA. The law of January 1919 relating to children's courts was superseded by a new Federal statute of July 18, 1928, which provided for the reorganization of the criminal law in regard to minors and for the development of special juvenile courts. The jurisdiction of these courts, attached to the lower criminal courts, included all offenses committed by minors: young persons between

the fourteenth and eighteenth birthday. As in many European countries, children under fourteen were handled by social agencies, and were seldom referred to the courts for adjudication.

The number of cases brought before the juvenile courts totalled 5,059 in 1929 (4.4 per cent of the cases before the courts; by 1934 they had fallen to 3,123—2.9 per cent). After "Anschluss" in 1938, the German law was extended to Austria.

Laws of Other States*

It may be of interest to summarize at this point the statutory provisions which are now in effect in other states for the offender between the ages of sixteen and twenty-one. The entire juvenile court movement, as well as provisions for dealing with youthful delinquency, has profited by the fact that since 1900 experimentation has been going on with various procedures and administrative setups in relation to these two problems. The development of special procedures for the older adolescent offender has been by no means uniform throughout the country.

For example, four jurisdictions and part of one other give to the juvenile court jurisdiction in delinquency cases between the ages of sixteen and twenty-one. These are Alaska and Arkansas¹ (all violations of any law); California (all except capital offenses; under the age of eighteen—all offenses without exception)²; Iowa² and Denver³ (all except capital and life imprisonment offenses). In California and Nevada, the adult court may transfer to the Juvenile Court the case of any minor eighteen to twenty-one, with the consent of the accused. The State of Michigan and our own Onondaga County have awarded jurisdiction over the wayward minor under the age of twenty-one to the Children's Court.

* Compiled from information furnished by the National Probation Association.

¹ The juvenile court's jurisdiction for all ages is concurrent if the child is arrested on a warrant.

² The juvenile court's jurisdiction from 18 to 21 is concurrent with the adult criminal court. In Iowa, the statute conferring this 18-21 concurrent jurisdiction upon the juvenile court is inoperative.

³ The Denver juvenile court's jurisdiction over minors from 18-21 is criminal; delinquency jurisdiction is up to 18 only.

In twenty states and parts of four others, the District of Columbia and Hawaii, the juvenile court has jurisdiction over delinquent boys up to the age of eighteen. These states are Arizona, Colorado (except the City and County of Denver), Idaho, Indiana, Maryland (counties having magistrates for juvenile cases, except Allegany and Washington Counties, and except Baltimore City), Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina (except Charleston, Greenville and Spartanburg Counties), South Dakota, Tennessee (Carter County), Utah, Virginia, Washington, West Virginia and Wisconsin. In the federal system and the Philippine Islands, there are no juvenile courts as such, but a special juvenile procedure is provided for children under eighteen.

As to delinquent girls under eighteen, in twenty-five states and parts of five others and the District of Columbia and Hawaii, the juvenile courts have jurisdiction. These states are Alabama (Jefferson and Montgomery Counties), Arizona, Colorado (except the City and County of Denver), Delaware, Idaho, Illinois, Indiana, Kentucky, Maryland (except Baltimore city, and Allegany and Washington Counties), Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina (except Charleston, Greenville and Spartanburg Counties), South Dakota, Tennessee (Carter County), Texas, Utah, Virginia, Washington, West Virginia and Wisconsin.

The Juvenile Court in Rhode Island has jurisdiction over wayward minors under this age. Juvenile courts in certain counties in South Carolina and Alabama likewise have delinquency jurisdiction in cases of children under the age of eighteen.

In twenty of the states having a juvenile court age limit of eighteen years, or more, jurisdiction of the Juvenile Court is over all offenses without exception.

Five states and part of one other, in addition to those just listed, give to the Juvenile Court delinquency jurisdiction over girls under the age of seventeen; and nine states and part of one other give such jurisdiction in cases of boys under seventeen.

In the very largest majority of states—thirty and parts of three others—the juvenile court may retain delinquency jurisdiction up to the age of twenty-one on continuance of the case after the child has passed the age limit for acquiring jurisdiction in the first instance.

In four states, the adult criminal courts have concurrent jurisdiction with the Juvenile Courts in cases of delinquents between the ages of eighteen and twenty-one (Arkansas, California, Colorado and Iowa).

In twenty-three states the Juvenile Court may waive jurisdiction in delinquency cases between the ages of sixteen and twenty-one. In all cases under the jurisdiction of the court: Alabama, Arkansas, California, Georgia, Illinois, Kentucky, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Washington, West Virginia. Such waiver of jurisdiction may only be done in the cases of felonies or offenses which are indictable or punishable by sentence to the state prison in the District of Columbia, Indiana (child sixteen or more), Iowa, Kansas, Maryland (Washington County: capital or "otherwise infamous crime," children under fourteen), Michigan, North Carolina (child of fourteen or more charged with a felony punishable by no more than ten years), Pennsylvania, Utah, Alaska, and in Mississippi, in misdemeanor cases only. Finally in five states, Alabama, California (eighteen to twenty-one, except capital offenses and attempts to commit them), Mississippi (felonies only), Nevada (eighteen to twenty-one in felony cases, except capital offenses and attempts to commit them), and Ohio, the adult criminal court may waive jurisdiction and allow the Juvenile Court to hear the case.

(N.B. For a description of the Youth Correction Authority Act for offenders sixteen to twenty-three, passed in California in 1941, see chapter 12, pp. 289-290.)

Procedure in Other Cities

There are three large cities in this country, outside of New York, which have experimented with special court procedures for

dealing with the adolescent offender. These are, in order of their establishment, the Boy's Court of the Municipal Court of Chicago, the Boys Misdemeanant's Division of the Municipal Court of Philadelphia, and the Wayward Minors Department of the Juvenile Court in the Probate Court of Wayne County, Detroit.

CHICAGO. The Boy's Court of Chicago was established in 1914, quite without special legislative enactment. It is a branch of the Municipal Court and has jurisdiction over misdemeanors and quasi-criminal offenses committed by boys between the ages of seventeen and twenty-one. In some cases the court also takes jurisdiction over adults involved with boys in this age group. Pre-hearing procedure is little different from the police handling which adult offenders experience, although some segregation of this age group is made in a part of the County Jail. Rotation of judges who preside over the Boy's Court, as well as the large number of cases with which they are daily confronted, hardly assures the desirable specialization of supervision or the necessary degree of individualization of treatment. Representatives of religious organizations carry the largest share of supervision. The probation officers employed in this court also supervise adult cases and this fact, coupled with the inadequacy of investigation prior to hearing, casts some doubt on the efficacy of the court's procedure.

While the Boy's Court receives complaints of parents and others regarding cases which may be deemed to be wayward minors, who are handled informally by the court and the social agencies connected with it without formal court action, the bulk of its work is with criminal offenses. Some of these misdemeanors and felonies are reduced to lesser offenses in order that they may come properly under the jurisdiction of the court. This determination is evidently made by an intake officer specially assigned to examine the case and to recommend disposition. In most cases, defendants charged with felonies are held for a preliminary examination, and if probable cause is found they are held for the Grand Jury.

PHILADELPHIA. The Municipal Court of Philadelphia, under authority of a legislative act passed in 1915 (P.L. 1017) has

exclusive jurisdiction over cases of incorrigibles—runaway, disobedient, idle and disorderly youths sixteen to twenty years of age. For purposes of administering this jurisdiction, the Court created a Men's and Women's Misdemeanant's Division with a procedure patterned very closely after that of the juvenile court.

The Court, in addition to this exclusive jurisdiction, further acts as a quasi-paroling authority in the case of ill-advised or illegal commitments to the local House of Correction made by magistrates who have no facilities for investigation. The judge also sits as an ex-officio justice of the peace with power to dispose of certain offenders summarily and to hold preliminary hearings of youths charged with indictable offenses. Flexibility permits criminal charges to be reduced to incorrigibility, when the circumstances warrant it. One judge is usually assigned to this Division of the Court and in practice presides over it for several consecutive years. An assistant district attorney acts as prosecuting officer to the Division.

Hearings are conducted informally, and all cases are investigated prior to the hearing. Physical, psychological and psychiatric examinations are made, where their necessity is indicated, for the purpose of assisting the Court in making a sound disposition. Individuals are kept under supervision for indefinite terms until there is definite improvement, or it has been demonstrated that further control is inadvisable. The philosophy of the probation work of this Division is described as "constructive rather than disciplinary." The aim of the Court is to protect the community and at the same time to assist in the rehabilitation of the youthful offender through sound social treatment.

Up to September 1939, this Division dealt with cases between the ages of sixteen and eighteen as well, but at that time the increase in the juvenile court age from sixteen to eighteen became effective (Act of June 15, 1939) and these cases were removed to the Juvenile Court Division of the Municipal Court and a separate session created to deal with them.

After a youth has been arrested and the police discover that he is under eighteen years of age, he is brought directly to the Juvenile Court after he has been fingerprinted, but not photo-

graphed or otherwise subjected to police investigation. The case is then assigned to a probation officer who interviews him, after which the judge determines whether or not he should be detained in the quarters attached to the court or released to his home or under bond. In practice, 70 per cent are so released and the remainder held in custody, apart from children.

Investigation of cases involving minor offenses frequently discloses problems which can be corrected readily in their incipient stages, thereby safeguarding both the offender and the community from further acts of delinquency. Likewise, treatment is determined by the problem of the offender rather than by the law prescribing a specific penalty for a given offense. In short, the juvenile court has wider latitude in differentiating the treatment accorded to two individuals who have committed an identical offense. For example, the court may commit the mentally defective boy to an institution for the feeble-minded and the normal boy to a correctional school, or place him on probation. The time of restraint is determined not by minimum or maximum penalties but by the offender's adjustment and readiness for return to the community. The law also permits the commitment of any child over sixteen years to any state industrial school or home for the reformation and correction of youths above this age, with the result that security can be provided in the few cases in which it may be needed. Furthermore, the law provides additional flexibility by leaving to the discretion of the juvenile court judge the right to transfer the very serious offender to the criminal court for trial. During 1940, 14 boys' cases and 1 girl's case involving robbery, sex offenses and homicide were so referred.

The district attorney selects his own tribunal in cases of homicide; in all other cases of sixteen and seventeen year olds, the jurisdiction is originally with the Juvenile Court. This session for older children is distinct and separate from the regular Juvenile Court and is held in a large court-room. Attendance in court is limited to the necessary court personnel, the principals involved in the instant case, and representatives of interested social agencies.

The judge sits on the bench in his robe, at the left a representative of the Probation Department who conveys to the judge pertinent data from the records before him. On the floor level, below the bench, sit the clerk of the court, the court stenographer and a presenting attorney or court representative. This officer performs, in informal fashion, the same function as the district attorney—he asks many of the questions and otherwise helps in the proceedings. Complainants and the witnesses are sworn in by the clerk in typical criminal court fashion. Throughout the proceedings the judge adopts a friendly and informal manner, in all cases using the child's first name.

The attitude of the court is that where its powers include commitment to an institution, the proceedings necessarily partake of the nature of a criminal case and a finding of guilt based on the evidence of witnesses is a prerequisite to the taking of so drastic a step. Obviously in these cases of older children, the hearing is no more a trial for an offense than it is in the cases of other juveniles, and the court may hold for treatment any child who, while technically not guilty of the charge before him, nevertheless reveals by reason of his need and condition the advisability of care or treatment by the court. An adjudication of delinquency must precede such an order for care or treatment, but this finding may of course be made where the child is clearly innocent of the offense which brings him—in this instance—before the court. The reports which help to guide the judge in the hearing and disposition of cases are prepared by the probation officers who are directly responsible to the court representative and the case supervisor who are present each day in court. Almost 3,000 cases of sixteen and seventeen year old offenders pass annually through this session of the Juvenile Court.

It is interesting to compare the number placed on probation or committed to institutions in 1940, under juvenile court jurisdiction, with those in 1938 before the age limit was raised. Figures gathered by the Pennsylvania Committee on Penal Affairs show that 14 per cent of the total arrested (2,294) resulted in commitment in 1938, as opposed to 24 per cent of the 1,959 arrests in 1940, or a 46 per cent increase. The difference in the numbers

placed on probation was even more pronounced, 398 or 17 per cent in 1938, as compared to 611 boys and girls or 32 per cent in 1940, or nearly double the ratio. Such comparative results should resolve the question that a non-criminal court procedure is too lenient for an adequate handling of the older adolescent offender.

DETROIT. The Michigan Juvenile Court Law of 1907 contained no description of the wayward minor, nor did it make any provision for handling these cases. This jurisdiction was conferred upon the Juvenile Court in 1927 under a law very similar to New York's Wayward Minor Law covering the age group seventeen to twenty-one. One additional definition not found in the New York Law specifies as a wayward minor a young person who "when not disabled from lawful occupation or study habitually idles away his or her time". Proceedings in wayward minor cases although conducted in the Juvenile Court are held separate from children's sessions.

Temporary detention of wayward minor cases may be "to any institutions in the State having facilities for such cases", to private homes or to the custody of the county agent or an officer of the Juvenile Court. A county jail is in fact used in many instances as the law specifies that facilities for the detention of children under seventeen shall not be used for wayward minors over seventeen, and to date no other facilities are available for the detention of this latter age group.

The hearing of wayward minor cases follows in general the procedure employed in children's cases by the Juvenile Courts of the State. Similarly, proceedings in these cases are not to be deemed criminal proceedings. The Wayward Minor Court makes use of the Mental Hygiene Clinic which serves the Juvenile Division of the Court. Disposition may include probation as well as commitment to public institutions, private homes, or the custody of certain officers or private persons.

Following the passage of the Minor Law, the Wayne County (Detroit) Juvenile Court established a separate department for the hearing of wayward minor cases. As far as known this is the only separate session for the hearing of wayward minor cases created anywhere in Michigan.

Throughout the State, the Wayward Minor Court is part of the Juvenile Court which in turn is legally designated as a division of the Probate Court in each County of the State. The Judge of Probate—elected for a four year term—divides his time between hearing matters coming under the general powers of the Probate Court and those cases arising in the Juvenile Division. In Wayne County there are four judges of Probate, one of whom is regularly assigned to the Juvenile Division and devotes his entire time to its administration.

The personnel of the Wayward Minor Department in Detroit consists of a director and three probation officers in the department for boys and a director and two probation officers for the cases of girls. These two directors act as referees in taking testimony, examining witnesses, and administering oaths. They submit written reports to the judge of Probate, containing a summary of the hearings as well as their recommendations for the court's findings and disposition.

While the Wayward Minors Court has original jurisdiction over the cases described in the statute, very few of the cases so handled would actually fall into this category. The majority of the youths treated by the court have in fact violated the law and the regular criminal court could have taken jurisdiction. Due, however, to the close cooperation between this court and the district attorney's office, many of the boys with no previous records or with only non-serious records are referred here. This step follows only after a conference has been held between the probation officer and the district attorney's office, and a determination has been made regarding the possibilities of satisfactory adjustment of the case under non-criminal court supervision. After referral, a thorough investigation into the boy's background and into the circumstances surrounding the case is made. If this investigation confirms the original impression that the boy should be treated as a wayward minor, an official complaint is filed in the Juvenile Court and proceedings are begun there.

In view of the fact that the statute defining the wayward minor is very specific, the complaint cannot alone allege that the youth has committed an offense, it must further charge him with one of

the acts or conditions defining a "wayward minor". This procedure obviates any further contact with the criminal court unless the boy fails to adjust under the court's supervision, when he may be returned to the criminal court for prosecution. A formal complaint charging him with the commission of an offense then brings his case before the regular criminal court. This is not interpreted as placing him in double jeopardy, as all proceedings in the Juvenile Court are completely non-criminal.

There is evidently no direct relationship between the Juvenile Delinquency Department and the Wayward Minor Department except that they are both divisions of the one court, and few cases are referred directly from the Juvenile Delinquency Department. By an arrangement with the Detroit Police Department, a large proportion of the arrests of non-resident youths between the ages of seventeen and twenty-one are referred to the probation department for investigation and disposition.

Neither Wayne County nor the State of Michigan has so far provided an institution for the commitment of wayward minors. In 1939, "Boysville", a privately operated farm type of institution with a vocational training program was established about forty miles from Detroit. Its facilities are extremely limited. Since the enactment of the Wayward Minor Law, the court has been able to use the House of the Good Shepherd, a Catholic operated institution for delinquent girls, as well as several boarding homes.

Michigan authorities feel that this failure to provide a varied institutional program has been a serious handicap in the administration of the Wayward Minor Act. They also believe that the original jurisdiction of the court should be broadened to include all first offenders between seventeen and twenty-one who are charged with a criminal offense, instead of relying, as they now do, upon the prosecutor's office to refer cases to them. There is an obvious parallel between this desire for a direct and completely legal jurisdiction over the youthful offender and the sentiment expressed in New York State for clear cut legislative sanction as a basis for treating this age group in a socialized fashion.

CHAPTER **VII.** THE YOUTH IN COURT

In the decade which has elapsed since the first efforts were made in New York City to free the adolescent from the full rigors of the criminal process, the conviction has steadily grown that these measures should be made uniform, and extended throughout the State. The Committee has secured sufficient evidence from all parts of the State to justify it in stating that not only is there a widespread desire to deal in noncriminal court fashion with the offender who is just beyond children's court age, but this desire has in fact been widely translated into practice. As a result, a great diversity of methods are now being used by our criminal courts in behalf of the sixteen to nineteen year old defendant.

The courts now using one or another of the special procedures or devices which we describe here, recognize that they are working outside the strictly legal framework of the Code of Criminal Procedure. They recognize further that upon an appeal they would have difficulty in justifying some of the steps they are now taking in behalf of those whom they consider to be worthy exceptions to the strict operation of the criminal law. The fact that no appeal has to date been taken from their dispositions—due to the obvious fact that the youthful defendant realizes that his welfare is being better conserved by whatever special procedure is employed than by a strict criminal procedure—is small comfort.

Most of the judges and court officers interviewed in the course of our inquiries stated their belief that these special procedures

are extra-legal. The Committee is well aware of the courage and ingenuity displayed by these men in the initiation and continuance of these procedures. We realize further that there is no judge in any court who would not rather work within the law than outside of it.

Present Procedures in County and City Courts Up-state

In the brief description that follows of the plans now in operation in the up-state courts, we have intentionally refrained from attributing to any court the particular plan which may be in operation there. Not only do we desire to protect these courts in the unheralded work which they may now be doing, but we further realize that the plan itself is of greater interest and importance than the precise court in which it may happen to be operative.

The measure most frequently employed in these courts is the reduction of the charge in order to spare the youth a felony record, with all the disabilities which accompany that kind of a conviction. Judges of these courts have frequently stated their opinion that sentence to a penal institution is too extreme for most of the offenses which these youths commit. Yet in order to hold them under some kind of supervision it is necessary first to convict.

Therefore, in the cases of certain defendants sixteen, seventeen or eighteen, awaiting indictment, we find some county court judges discharging the youth first from jail and placing him in the custody of a probation officer. Were this not done, some of these boys would be detained for as long as six months awaiting action by a grand jury which may meet only twice a year. After indictment and on the date of the hearing the judge then reduces a burglary indictment, for example, to a misdemeanor, such as unlawful entry, or takes a plea to a lesser offense. The boy is thus spared a felony record at the same time that he is held accountable in some measure for his offense, and does not entirely escape further court supervision.

Although some judges now employing this method choose to describe it as the "—— County plan", there is of course nothing

unique about it. Judges have always had authority to release from jail in custody of an officer of the court and the reduction of charges or acceptance of a plea to a lesser offense is as old as the realization in the criminal law that its rigors must somehow be evaded in certain cases—which is a very long time, indeed.

Another county has developed its own plan for boys sixteen to twenty who have been held for and indicted by the grand jury. At a conference of the district attorney, the judge and the chief probation officer, the trial list of all those who are sixteen to twenty and who are known to be first offenders is reviewed. On arraignment, if the youth is not represented, counsel is assigned to him, and he is directed to plead "not guilty". Between the hearing and the trial an investigation is made—with the consent of the boy and his counsel. This investigation includes some reference to the circumstances of the offense. Another meeting is then held between the district attorney, the judge, and the probation officer, at which time the court determines whether or not it will entertain a plea to a misdemeanor.

The only youths who are refused this privilege are those charged with a second felony, with robbery, or with a crime where violence is involved. Boys with long misdemeanor records are usually denied this procedure, also; otherwise all indictable offenses involving youths sixteen to twenty are subject to it.

The plan has certain obvious advantages: it assures every youthful defendant of representation by counsel and spares deserving cases a felony conviction. Its weaknesses are also obvious: it comes into operation only after indictment; it has no effect whatsoever on the processes of apprehension, preliminary hearing or detention; it encourages hypocrisy by first requiring the youth to plead "not guilty" and subsequently to repudiate this plea.

The judge of this court fully admits that his plan is further evasive in that the district attorney must by law give a reason for allowing a reduced plea, and he should have more than an ordinary "hunch" for so doing. Furthermore, this plan depends entirely on the good will and social consciousness of the judge and the district attorney, and may be open, in certain instances, to

abuse for reasons which may be summed up under the heading of "expedient".

In a large up-state city court, about one-third of the youthful defendants are handled by a special procedure. Upon a plea of guilty, where there are special "mitigating circumstances", and with the consent of the complainant, the probation officer makes an investigation into the youth's background. If the results of this investigation confirm the initial opinion that the case would not best be handled by means of a criminal conviction, the defendant is then permitted to withdraw his plea, and his case is discharged. This is done with the overt understanding that he will accept "voluntary" or "unofficial" probation upon this discharge, which leaves the court, in actuality, no official control over him. Such an ending must seem to the youth to be considerable of an anti-climax, concluding, as it does, a court process which has allowed him—at least once—to reverse his plea.

In certain other cases in this same court—just how the differentiation is made, is not clear—consent is secured from the youthful defendant or his counsel (where he is represented) to waive his right not to be investigated prior to conviction. He further agrees to abide by the results of this investigation. The complainant's assent to this procedure is secured as a matter of course. When the investigation is completed, another hearing is held—in open court or in chambers—with the defendant, his counsel and parents, the complainant, district attorney and probation officer present. At this time the probation report is presented. If it is agreed that the case had best be handled "voluntarily" or "unofficially", the youth is discharged, after which the probation office continues to supervise him.

It should be stated at this point, that not only are these various commendable subterfuges employed in a limited number of cases, but the period of time in which the defendant is held for "unofficial" probation is likewise limited. Courts which have conceived these various plans are anxious—for obvious reasons—that their tenuous control over a discharged defendant not be extended for too long a period of time.

THE YOUTH IN COURT

Another up-state county has evolved its special "system" for cases between the ages of sixteen and twenty. The application of this plan is limited to offenders who have no prior court record and who are not charged with a crime of violence. In a typical case, this procedure would operate as follows: A youth has been indicted by the grand jury for larceny of an automobile. He is brought before the court, and the judge is informed that he has no prior record. The case is then put over for a week or ten days, the boy being released or continued on bail. Meanwhile he is interviewed as to his background, family situation, school and employment history, etc. Nothing on the offense in question is examined into. When the probation officer files his report and it is discovered that there is some domestic difficulty, lack of parental supervision, poor companionship or the like, the judge suspends trial on the indictment, "to await the results of a final investigation". Then, with the consent of the boy, his parents, the district attorney, and usually the complainant, the boy is placed on "unofficial" probation. The case is again brought up at a later date—not too distant—and if the probation officer reports satisfactory conduct, the judge decides whether to accept a plea to a misdemeanor, or whether the district attorney will, with the consent of the judge, *not pros*. If the boy fails on probation within what is considered to be—but is not clearly defined—a reasonable length of time, the case is tried in the usual manner.

This procedure has been in operation for less than a year and although it has not been used for many cases, these represent about five per cent of the sixteen to twenty year old defendants who are indicted in this particular county.

One county court up-state, which made a practice in certain felonies charged against youthful offenders, of taking reduced pleas to a misdemeanor, recently found itself confronted with a situation which made this procedure difficult, if not impossible, to continue. The district attorney of the county had made a ruling that he would no longer recommend reduced pleas on any charges against any defendant, youthful or otherwise. This step had been taken in order, as he had announced, to throw the

responsibility for a reduced charge onto the judges themselves, and to avoid any future criticism of his office. Many adolescents thus found themselves awaiting action by the grand jury because the magistrate could no longer reduce the charge against them from a felony to a misdemeanor which came within his jurisdiction for summary action. It was argued that such boys as could not secure bail stood to gain from a jail experience, which might "teach them a lesson"—even though the charge against them might later be dismissed!

Such youths now find themselves held for an indictment on two counts for the same offense: one charge for a felony and one for a misdemeanor. Upon arraignment, the youth is usually persuaded to plead guilty to the latter, after which he is placed on probation.

This plan, with its contradictions of philosophy working at cross-purposes with procedure for the avowed benefit of the boy, operates actually to his detriment. Because the prosecutor's office desires to free itself from possible—or actual—criticism on the part of the electorate, the young defendant finds himself confronted with a felony charge, where it is admitted that a misdemeanor complaint could lie; he is committed to jail in order that he may be "taught a lesson"—although a different kind of a "lesson" is learned from what is intended; and when magistrates, jail, grand jury and county court have finally ground out his verdict—and him—he finds himself under a term of probation and supervision for the misdemeanor which it is admitted could have been charged against him in the first instance.

To the mind of this Committee, the confusions of this plan epitomize the conditions to be found in many parts of the State. It indicates to us the necessity for introducing without delay a state-wide plan for dealing with the youthful offender which will be both consistent and uniform.

The Wayward Minor in the Children's Court

The original purpose of the Wayward Minor Law when it was passed in 1923 (Section 913, Code of Criminal Procedure) was

to enable parents and custodians of disobedient or unmanageable children between the ages of sixteen and twenty-one to apply to the court for assistance in dealing with them. This was the only interpretation of the law up to the time when it was employed by some courts for the handling of adolescents originally referred to them on a criminal complaint.

Some courts now use the Wayward Minor Law as it was originally designed, although the number of such cases is very small, due to the fact that few such petitions are referred.

The Children's Court of Onondaga County is the only Children's Court in the State which has been granted jurisdiction over wayward minors, sixteen to twenty-one years of age. This court has received some fifty or sixty wayward minor petitions annually since 1936, when the law was passed. In most instances these are cases of adolescents who, while they may not have committed an unlawful act, can nevertheless be shown to have engaged in a course of conduct which meets the conditions of the Wayward Minor Law and which clearly shows them to be in need of supervision.

Excellent cooperation is reported between the Crime Prevention Division of the Syracuse Police Department, the office of the District Attorney and the Children's Court. After the police have arrested a boy found to be sixteen or over, a district attorney at the City Court refers him—in certain instances—directly to the Children's Court. Such cases are not arraigned. Without alleging the commission of a criminal offense, the police then file or secure the filing of a wayward minor petition. However, the judge of the Children's Court, in his disposition, takes into consideration the fact that the original charge could have been a misdemeanor or felony.

Of four cases involved in the same offense heard in the course of an afternoon's business in the Children's Court two boys were brought in as violators of probation in the Children's Court (although they were over sixteen); another was a boy over sixteen, who was charged with being a wayward minor, and the fourth was handled as a straight Children's Court case. This last was under sixteen, and was without any court record.

The Court also received a wayward minor petition in the case of a seventeen year old girl who was found living in a hotel with a twenty year old youth charged with burglary. The girl was not needed as a material witness by the district attorney, who referred her to the Children's Court on a wayward minor petition signed by a policewoman. The girl was detained in a foster detention home until her parents could appear, and an investigation was requested from the probation department in her home town. In this instance, the district attorney, was the prime mover in referring the case to the Children's Court as a wayward minor.

By a recent law (Chapter 366 of the Laws of 1941) all judges of children's courts are now magistrates and can, therefore, take jurisdiction of wayward minor cases. These cases must, however, first be referred to them. The Committee therefore commends to the attention of other children's courts the procedure in this county whereby young people over the age of sixteen, who, while not complained of the commission of an offense, are nevertheless dealt with by the children's court because they are proper subjects of the court's concern. Education undertaken in the community, as well as the correct understanding of the work of the children's court by district attorneys, police, judges of criminal courts and social agencies generally, will assure that the jurisdiction of the children's courts over wayward minor cases will be properly—and increasingly—assumed.

Although the State-wide Children's Court Act, and the special County Children's Court Acts clearly give to these courts continuing jurisdiction in children's cases up to the age of twenty-one, this jurisdiction is seldom, if ever, exercised. It cannot, therefore, be described as particularly helpful in adolescent cases. The reason for this lies chiefly in the fact that the children's court discharges cases from its supervision after they have done well for a period of time. Nor has any conflict been noted or reported throughout the State between the continued jurisdiction of the children's court and the original jurisdiction of the adult courts, in criminal matters.

In actual practice, it falls to the arresting officer to determine whether to bring an apprehended youth into the children's court

(if he is on probation to that court) or into the criminal court. The police officer cannot be expected to know whether or not he has apprehended a youth who is under children's court control and it is understandable that under the circumstances the youth will hesitate to divulge anything regarding his previous court experiences. It is only when the youth has been arraigned in criminal court that the fact may be revealed that he is under the jurisdiction of the children's court, but by this time the criminal complaint has already been filed. Few magistrates care to discharge a case back to the children's court at this point in the procedure, and the value of such a step would, in fact, be questionable.

The Justices of the Peace

In any consideration of the criminal court system of the State, it is essential that some attention be paid to the justices of the peace. In the last analysis, these men are the representatives of the judicial system in the non-urban districts of the State. The bulk of all criminal complaints originating within these areas must first pass through their hands. In 1931 the Department of Correction listed 3,670 justices of the peace holding office in 1932 towns. There were as a rule four justices in each town. Of the total number only some 1,500 actually held court and heard criminal cases. The other justices considered themselves only as members of the Town Board under which they had some administrative functions; some of them also presided at the hearing of certain civil matters.

These figures have been reduced as a result of laws passed in 1932, 1939 and 1940 which attempted to curtail the number, making two justices of the peace, instead of four, the rule for each town.

Justices of the peace have jurisdiction in criminal cases, holding in fact, Courts of Special Sessions when they so sit. Their powers parallel those of city judges and magistrates. They have exclusive jurisdiction to hear and determine certain misdemeanors including, among others: petty larceny—first offense, assault in

the third degree, disorderly conduct, gambling, indecency, intoxication, vagrancy and violations of traffic, public health and welfare laws.

Justices of the peace may hold preliminary hearings only in cases of felonies and indictable misdemeanors in order to determine whether or not to hold for the grand jury. The Wayward Minor Law specifically exempts them from any jurisdiction over these cases.

The Commission which recommended the State-wide Children's Court Act said, regarding the inadequate handling of children's cases by justices of the peace in 1922:

"While sometimes one finds among these officials men who show a sympathetic and constructive interest in the children arraigned before them, unfortunately such justices are the exception rather than the rule. Official and private investigations have conclusively shown the unfitness of many of them to handle the delicate situations involved in the trial of children charged with delinquency or who lack proper guardianship. Most of these justices are untrained in the law and lack the qualifications needed in officials upon whom rests the responsibility of working out a plan for providing for some neglected child or for one who has gone wrong less through any fault of his own than through the failure of the community to meet properly his natural desires for self expression." (Legislative Document No. 84, pp. 9-10.)

In 1928 and again in 1929 the State Crime Commission urged that the rural courts should be relieved of their criminal jurisdiction, and that district judges, appointed by local boards of supervisors should take over this duty. It was recommended that these judges should be compensated on an adequate, annual basis, that they should be lawyers, and that their terms should extend for not less than five years. In 1929 a constitutional amendment was proposed by concurrent resolution of the Senate and Assembly which was submitted to and approved by the people.

The proposal specified that—" . . . the powers or duties now exercised by justices of the peace may be transferred by law to inferior local courts of criminal jurisdiction . . ." (New York State Const., Article VI, Section 17).

The 1934 Committee on the Administration of Justice in New York State reported on certain defects in the present system of justices courts, especially with regard to criminal matters. Because of the decentralization of their courts, and the lack of any coordination or supervision, "the work done by justices of the peace ranges from extremely good to unbelievably bad". (New York State Legislative Document No. 50, p. 674.) Great inequalities in case load, haphazard record keeping, ignorance of the law—with consequent reliance upon lawyers or the complaining state trooper, dependence upon the outmoded fee system, further hamper these rural courts in their administration of criminal justice. The Committee further stated:

"The criminal work of justices varies somewhat with the community, but in practically every case violations of the vehicle and traffic laws head the list, with disorderly conduct, third degree assault, public intoxication, or petty larceny usually appearing in second place. Traffic cases are so far in the lead that they occupy more than half of the docket-books of most justices. Some idea of the volume of the justices' work of this nature may be obtained from the fact that the State Police alone make about 30,000 such arrests each year. Practically all of these are tried before a justice of the peace." (p. 567)

Although certain traffic offenses have been reduced by the Legislature to "infractions", many serious violations of the motor vehicle laws still remain misdemeanors—such as operating without a license. Justices of the peace also hear large numbers of "conservation cases", violations of hunting and fishing laws, offenses committed against the rules and regulations of the State Parks, and the like. In these instances, the Committee has discovered, a game warden, state trooper or other officer brings the

young defendant directly before the justice and states the charges against him. If he is guilty, the youth usually does not hesitate to admit to it; he is anxious only to learn the extent of the costs and to dispose of the matter on the spot.

In effect the adolescent often pleads guilty to a misdemeanor even before the justice has had an opportunity to remind him that he is pleading guilty to a crime, that upon conviction a criminal record will stand permanently against him. There is nothing that the magistrate can do to wipe out this conviction once the youth has, in effect, admitted his guilt. Thereafter, he may fine or suspend the sentence or impose any other condition which the law allows him in these instances.

The very largest percentage of the justices of the peace now sitting in the State are not lawyers and are without any special training for the judicial functions which they administer. Recent years have seen measures properly taken to reduce their criminal jurisdiction and to place some control over their income from fees. The Committee commends these steps, and believes that it is time for Article VI, Section 17 of the State Constitution to be more fully applied.

To this end, the draft act which we submit with this report (see pp. 186-200) exempts justices of the peace from any jurisdiction over youthful offenders, as they are now excluded from any control over the wayward minor.

Facilities available to these justices in the way of investigation and supervision are completely lacking in almost all parts of the State. We believe that by depriving justices of the peace of any jurisdiction over the offenses committed by youths sixteen, seventeen, and eighteen, we will be achieving an important forward step in socializing and unifying the criminal court procedure throughout the State. The arguments raised twenty years ago against continued jurisdiction by justices courts over the cases of children are just as valid today in relation to the cases of youthful offenders. It is our earnest opinion that a higher degree of successful treatment of the adolescent will come about by giving original jurisdiction in these cases to a youth court associated with the children's court. Such youth courts, having initial

jurisdiction in all offenses committed by youths under nineteen, with power as committing magistrates to hold for the grand jury, will replace the present ineffective treatment of this age group by our present justices of the peace.

Present Procedures in New York City

In New York City no such great diversity exists in the procedures for youthful offenders as is found up-state. The plans outlined in the preceding section may be described as attempts to skirt the criminal procedure in order to exempt adolescents from its harsher provisions. The New York City plans, on the other hand, largely throw the criminal procedure overboard, and utilize in its place, in one way or another, the Wayward Minor Law of 1923 (Section 913, Code of Criminal Procedure).

In all, the Committee has discovered three separate procedures which are employing some adaptation of the Wayward Minor Law to their purpose. These will be discussed in succeeding sections of this chapter.

THE ADOLESCENT'S COURTS IN BROOKLYN AND QUEENS. It is generally acknowledged that the first application of the Wayward Minor Law for the treatment of youthful offenders was begun in Kings County as a result of the work done by the Courts Committee of the Brooklyn Bureau of Charities. As early as 1929 this Committee had drawn up a statement for submission to its Board of Directors setting out the problem of youthful criminality and pointing to the inadequacy of existing criminal court procedures. However, the use of the wayward minor procedure in place of a criminal complaint was to wait some six years before it found its way into the Magistrates' Court system.

In the interim the Magistrates' Court in Manhattan created—unofficially—"a special term for adolescent boys" to deal with two special types of cases. The first consisted of those charged with serious offenses whose cases were dismissed for want of evidence or because the complainant refused to prosecute. In

these instances, the magistrate requested officers attached to the Crime Prevention Bureau of the Police Department to bring in a wayward minor complaint in order that these boys might still undergo some supervision by the court even though jurisdiction was lacking because the complaint had to be dismissed. The second group dealt with by this special term consisted of youths referred by workers in private agencies when they felt that contact with the judge would be of value for these boys.

The unwillingness of the complainant to press charges or to invoke the Wayward Minor Law against a boy because of his youth had resulted in many cases of youths being dismissed by the Magistrates' Court. The magistrate at this time felt that the dignity of the law was impaired because these boys were allowed to go scott free with no further court control, and the fear arose that the deterrent effect of the court hearing would be seriously weakened.

The first session of this term was held in the magistrates' chambers in September of 1932. Thereafter hearings were conducted informally one afternoon a week. The judge had the assistance of the chief probation officer, a psychiatrist, a representative of the Crime Prevention Bureau and agency representatives. Although less than one hundred cases altogether were handled by this procedure before it was discontinued, it had paved the way for the creation of a special adolescent's court fitted into the structure of the Magistrates' Court system.

Pursuant to a resolution adopted by the Board of City Magistrates on October 30, 1934, the Adolescent's Court was begun in Brooklyn on January 1, 1935 with a formal dedication by Mayor LaGuardia. One week later the first cases of youths were heard by this newly created court. The procedure in these courts has changed from time to time, but essentially it has remained the same since its inception. In the first place it is limited to boys sixteen, seventeen and eighteen years of age who come to the attention of the court by means of a formal complaint filed by an arresting officer or other complainant. Detention is in a separate wing of the old Raymond Street Jail. Nothing in this procedure alters the police handling of these cases although some

attempts, not always successful, are made to keep them separate and apart from adults. On the day of his arraignment—usually not longer than forty-eight hours after arrest—the offender is brought from the jail where he has been remanded or comes into court freely if he has been released on bail on his own recognizance. Jail cases await the arraignment in a special pen attached directly to the court.

All hearings are conducted in chambers—a small inadequate room leading off from what was a court-room and which now serves as waiting room and for clerk's quarters. (At this writing, large and adequate space is being prepared for the use of the Court, which will relieve overcrowding, and add dignity to the Court, without reducing the degree of informality which has hitherto prevailed.) Present at the hearing in addition to the judge is a clerk, one of the two probation officers attached to the court, a representative of the district attorney's office and a court stenographer. The boy, the complainant, witnesses and usually the boy's parents are likewise present.

Two different forms of the same procedure are found in the Adolescent's Courts. Under the first of these, the decision of the court—whether or not to hold for special sessions or for the grand jury, on the one hand, or to allow the substitution of a wayward minor complaint, on the other—is frequently made without benefit of any preliminary investigation. This is perhaps the greatest weakness of the wayward minor procedure in Brooklyn.

If the boy waives examination he is held in jail or on bail for the Court of Special Sessions or the Grand Jury and the papers in the case are forwarded to the proper authorities. If it is determined that he shall be held as a wayward minor, the procedure is explained to him and a return date is set for hearing on this new complaint.

The parent has already signed a complaint that the youth is a wayward minor and evidence is taken on this point at the wayward minor hearing. The mother or father then swears under oath that their son is "morally depraved or in danger of becoming so", or is persistently disobedient to their lawful commands; whereupon the judge adjudicates the youth to be a wayward

minor, and either suspends sentence or places him on probation. The length of this probation period is usually not specified, but does not generally run much beyond a year.

In the first years of its development, the Adolescent's Court depended almost entirely upon private agencies for supervision of cases placed on probation. The Brooklyn Bureau of Charities, Catholic Charities Bureau, Jewish Board of Guardians and the Urban League were assigned cases on a religious or racial basis. When the case loads borne by these agencies became excessive, a larger staff of probation officers was transferred from the other Magistrates' Courts to supervise probationers, the agencies continuing their co-operation in an advisory and auxiliary relationship.

If at the completion of what the court thinks should be the length of his probation term, the youth responds well, he is discharged from probation and thus finds himself free from any criminal record. Adjudication as a "wayward minor" is comparable to finding a juvenile "delinquent" in the children's court: it is an adjudication of a status, not a conviction for a crime. If he violates the terms of his probation or commits a new offense, the youth may then be committed to an institution by the court.

It will be noted that the procedure in the Adolescent's Courts is limited entirely to boys. Cases of wayward minor girls—between the ages of sixteen and twenty-one are handled by the Wayward Minor Court for Girls in Manhattan, which has jurisdiction over the five New York Counties. A description of this procedure will be found in a succeeding section.

Under the alternative procedure used in these Courts, when the defendant is arraigned, he is informed of his rights and asked whether he wishes to proceed on the hearing or whether he desires an adjournment. When the defendant is ready, the hearing proceeds in the same manner as a hearing in any one of the City Magistrates' Courts. At the end of the Peoples' case, a motion is made by the Court for the defendant that the complaint be dismissed on the grounds that a *prima facie* case against the youth has not been proved. Decision on this motion is then

reserved by the Court, and the youth is asked whether or not he wishes to take the stand, or to make a statement.

After this procedure the complainant is asked if he has any objection to having the youth held for wayward minor treatment which is explained to him. A wayward minor complaint is then drawn and the youth is arraigned on this new complaint. He is asked whether he is ready to proceed on it, and his affirmative answer results in a regular hearing on the charge. Upon completion of the Peoples' side of the case, a motion to dismiss is made on behalf of the defendant. This is denied by the Court. The youth is then informed of his rights and asked if he desires to testify in language similar to the following:

"You can take the stand and testify in your own behalf, you can call any witnesses that you desire to call, if you decline to take the stand, the fact that you declined to take the stand cannot be used against you, but if you do take the stand you will be cross-examined by the District Attorney."

At the end of the entire case a motion is again made by the Court, for the defendant, to dismiss the wayward minor charge on the ground that it has not been established beyond a reasonable doubt. Decision on this motion is reserved by the Court.

The youth and his parents or guardian are then asked if they are willing to consent to having an investigation made by a probation officer. Upon their consent, the wayward minor charge and the original complaint are adjourned for sufficient time to enable an investigation to be made. On the adjourned date, when the report is made to the Court, the motion to dismiss the criminal charge is granted and the motion to dismiss the wayward minor complaint is denied. The youth is then adjudged a wayward minor and he is either placed on probation, committed or given a suspended sentence.

The Queens Adolescent's Court was started in 1936, one year after the original experiment in Brooklyn. The procedure here has changed during the course of years, but since June of 1940, it has become fairly standardized.

Up to May of 1941, this Court treated by the wayward minor procedure the cases of boys between the ages of sixteen and

twenty-one. Upon the passage of the bill legalizing the work of this Court and the Court in Brooklyn, the two upper ages of nineteen and twenty were excluded from the jurisdiction of this Court, which is now concerned only with the sixteen, seventeen and eighteen year olds, paralleling the Brooklyn Court.

Five judges rotate in this Court, each of whom presides in rotation at the regular Friday morning session for wayward minors. Because the problem of crime is not so serious in Queens as it is in Kings, this Court has not found it necessary to reserve more than one day a week for the hearing of these cases. This has occasioned many delays in the hearing of youthful cases, because a boy may be held for as long as six days before his case is heard.

Initially, this Court received cases on transfer from the Magistrates' Court in which the cases of youths were first arraigned. Since the issuance of an order by the Chief City Magistrate in June of 1940, all cases of adolescents are now brought initially into this Court instead of first being arraigned elsewhere.

Original cases of youthful defendants in this Court were heard in the regular court-room, but in recent years this session has been transferred to chambers, a room scarcely adequate for the large number of persons necessary for the conduct of the session.

Two features of the Queens Court procedure commend themselves: An investigation precedes any decision by the Court to hold the youth as a wayward minor instead of on the criminal complaint, and at the time the wayward minor complaint is being entertained, no testimony in relation to it is taken from the parents, the proof of the commission of an offense being considered sufficient evidence to permit the court to adjudicate the boy as a wayward minor.

The wayward minor procedure as here outlined has many advantages over the regular criminal procedure employed in the Magistrates' Courts for youths sixteen, seventeen and eighteen who are charged with a criminal complaint. In the Adolescent's Courts, these young defendants are brought before a court of first instance which operates under a jurisdiction allowing it to dispose of cases without the many delays which now confound

the criminal court process in other places. During the period of detention, these youths are usually segregated from adult criminals. They are, furthermore, given the benefit of a private hearing instead of being heard in the regular criminal court where they sit with adult defendants in open pens, subject to the embarrassment of being on view before a full court-room of adult curiosity seekers. Finally, and most important, youthful defendants handled by the wayward minor procedure have a chance to be dealt with under a form of socialized treatment in which the particular offense which first brought them to the attention of the court is minimized, if not completely eliminated, and the disposition made on the basis of the youth's need and condition.

A great deal of discussion has been printed regarding follow-up figures and success rates for individuals who have passed through certain special procedures for adolescent offenders. Proponents of these newer methods have cited proportions of successes running to nine-tenths of all cases disposed of by the courts; critics and opponents have urged that the true figures show the very reverse. Neither side has offered to describe in any special terms just what such rates of success or failure actually measure or evaluate. If the offender has spent an extensive period of time in jail prior to his arraignment and was then discharged by the court, do these follow-up figures appraise the brief court appearance or do they estimate the deteriorative effect of the period spent in jail? If the court later places him on probation, and his after-career is followed, does success or failure measure the effect of the court procedure, or does it evaluate the kind of supervision he has received while he was on probation?

The Committee urges a truly scientific approach to the study and analysis of the results of present efforts with delinquents. Only by a relentless testing of present methods in this field can progress be made. But in the application of scientific criteria, a proper understanding of the method employed, as well as an appraisal of the validity of the material subjected to that method; are essential for reliable and valid results. The value of the wayward minor procedure can be neither affirmed nor denied on the basis of the figures brought forward by those who seek either to defend or abolish it.

The fact remains that in all the courts of New York City, outside of the Adolescents' Courts in Brooklyn and Queens, the Wayward Minor Court for Girls, and the wayward minor procedure in the Court of General Sessions, all other defendants in the age group sixteen through eighteen are handled as adult criminals, with all the disadvantages which accrue to this process in the determination of guilt or innocence as well as in the treatment and rehabilitation of youthful offenders. Evidence to date has amply confirmed the fact that this criminal court procedure, through its emphasis on offense rather than condition, has failed to prevent the development of youthful criminal careers.

Because of the difficulty of getting a consistent picture of the work of the Brooklyn Adolescent's Court during any one year, the Committee was interested in making a case by case tabulation of the docket book of this Court. The year 1939 was selected because it was considered typical by court officials and furthermore because all the cases arraigned during that year were disposed of at the time this tally was made in the fall of 1941.

Such a tally reveals a total of 1516 arraignments of individuals in this court during the year. This figure excludes offenders who may have been twice before the court on different charges, as well as more than one charge against a single defendant. Of this number, 40 per cent were of youths sixteen years old, the balance of the cases was very nearly equally divided between those seventeen and eighteen. Three cases of nineteen year olds and one twenty year old were brought before the court but were transferred elsewhere when their exact age was discovered. May and June of this year saw a total of 309 defendants brought before the court, a total slightly more than one-fifth of the total arraignments during that year. The low point was reached in November with slightly over 5 per cent of the arraignments.

The following chart shows the complaints which brought these youths before the court and the disposition which was made. Almost one-half of the complaints fell into the category of offenses against public order. This is an indication of the juvenile type of offense committed by these youths and is an indication of the value which would inhere to a socialized treatment of

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these cases. Practically 40 per cent of the complaints were for offenses against property. The 37 cases of wayward minors refer to cases continued from the preceding year—in this instance these cases represent final disposition. The group entitled "straight wayward minors" refer to petitions brought by parents or others against youths under the wayward minor law. It will be noted that almost one-half of these latter cases were discharged by the court.

Chart No. 1. Complaint and Disposition

COMPLAINT	DISPOSITION									
	DISCHARGED ¹	FINE	SUSP. SENT.	WAYWARD MINOR	PROBATION	TRANSFER TO OTHER COURTS ²	JAIL SENT.	COMMITTED ³	WARRANT	Total
PROPERTY	141		2	344		91	1	3	2	584
PUBLIC ORDER	333	25	283	28	4	12	38	2	1	726
WAYWARD MINOR	2		8		27					37
STRAIGHT WAYWARD MINOR	16		6		7			6		35
VIOLENCE	24		2	13		18				57
SEX	12			22		43				77
<i>Total</i>	528	25	301	407	38	164	39	11	3	1516
<i>Per cent</i>	34.8	1.6	20.0	27.0	2.5	10.8	2.5	0.6	0.2	100.0

¹ Includes: Discharged 161; dismissed 335; complaint withdrawn, 32.

² Includes: 45 cases held for the Court of Special Sessions, 110 for the Grand Jury, and 9 transferred to other courts, such as children's.

³ Includes: 5 to Children's Village, 1 to Hawthorne, 4 to State Vocational Institution, 1 to State School of Industry.

In fact, over one-third of the total number of cases were discharged. This is a further indication of the value of a procedure which would handle in non-criminal court fashion a large percentage of the relatively unimportant complaints brought to its attention. In such a court, discharges would in all likelihood not be made without some kind of a preliminary investigation by the probation department in order to ascertain that no serious social condition was being overlooked.

Suspended sentences in this group amounted to an exact fifth of all dispositions and less than 5 per cent were placed on probation without first being adjudicated as wayward minor. Slightly over 10 per cent were transferred to other courts (which includes the grand jury).

The most important finding of this chart is the fact that 27 per cent of the total arraignments received wayward minor substitutions. The percentage of arraignments receiving this kind of disposition has increased steadily since 1937: 13 per cent were so held during that year, 22 per cent in 1938, 27 per cent in 1939 and 31 per cent in 1940.

In this and subsequent charts complaint categories include offenses as follows: Property—burglary, conspiracy, forgery, fraud, grand larceny, larceny of auto, receiving stolen goods, unauthorized use, unlawful entry. Public Order—assault and battery, bookmaking, disorderly conduct, disturbing the peace, evading fare, gaming, loitering, lottery, malicious mischief, policy, runaway, slot machines, trespass, vagrancy. Violence—abduction, arson, assault to rob, burglar's tools, carnal abuse of a minor, dangerous weapon, felonious assault, impairing morals, rape, robbery. Sex—incest, indecent exposure, sodomy.

The following chart analyzes the dispositions of the total arraignments, by age. It will be noted that in the case of defendants sixteen and seventeen years of age, the proportion of cases discharged runs over one-third, while in the case of the eighteen year olds this drops to approximately 30 per cent. A decrease in the use of the wayward minor reduction procedure is also noted as the age of the defendant increases: 30 per cent of the sixteen year olds, 25 per cent of the seventeen year olds and 24

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per cent of the eighteen year olds are so disposed of by this Court. There is a corresponding, though slight, increase in transfers from the Adolescent's Court to other courts and the grand jury as the age of the defendant rises.

Chart No. 2. Disposition and Age

DISPOSITION	A G E					Total	Per cent
	16	17	18	19	20		
DISCHARGED ¹	218	176	134			528	34.8
FINE	12	6	7			25	1.6
SUSPENDED SENTENCE	101	91	109			301	20.0
WAYWARD MINOR	181	120	106			407	27.0
PROBATION	12	10	13	3		38	2.5
TRANSFERRED TO OTHER COURTS ²	49	56	57	1	1	164	10.8
JAIL SENTENCE	14	12	13			39	2.5
COMMITTED ³	9	1	1			11	0.6
WARRANT		2	1			3	0.2
<i>Total</i>	596	474	441	4	1	1516	100.0
<i>Per cent</i>	39.3	31.3	29.2	0.2	—	100.0	

¹ Includes: Discharged 161; dismissed 335; complaint withdrawn 32.

² Includes: 45 cases held for the Court of Special Sessions; 110 for the Grand Jury; and 9 transferred to other courts, such as children's.

³ Includes: 5 to Children's Village; 1 to Hawthorne; 4 to State Vocational Institution; 1 to State School of Industry.

The following chart which compares initial and final dispositions, shows the final disposition of the 406 cases which were held as wayward minors. It will be noted that two-thirds (68.9 per cent) of these wayward minors were placed on probation and almost a tenth (9.7 per cent) committed to institutions. Between

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the time of the original determination to substitute a wayward minor charge and the date of the final hearing, all but nine of these cases were adjudicated as wayward minors, the remainder being either discharged (5 cases), given a suspended sentence (3 cases), or committed (1 case). Almost a fifth (18.0 per cent) were given a suspended sentence upon the second hearing in the court; it is understood that this disposition does not necessarily carry probation.

Chart No. 3. Disposition and Final Disposition

DISPOSITION	FINAL DISPOSITION				Total	Per cent
	DIS- CHARGED ¹	SUS- PENDED SENTENCE	PRO- BATION	COM- MITTED ²		
DISCHARGED	1	1		3	5	1.0
WAYWARD MINOR	13	68	277	39	397	98.3
SUSPENDED SENTENCE		1	2		3	0.7
NEW YORK STATE VOCATIONAL SCHOOL		1			1	
<i>Total</i>	14	71	279	42	406	100.0
<i>Per cent</i>	3.4	18.0	68.9	9.7	100.	

¹ Includes: 11 dismissed; 3 discharged.

² Includes: 6 Children's Village, 16 New York State Vocational School, 12 New York City Reformatory, 3 to Wassaic, 1 Nassau State Hospital, 1 New York State Reformatory, 2 Returned as parole violators, 1 New York State Training.

A comparison between the following chart which shows the final disposition of the complaints which brought these youths before the court, and chart No. 1, reveals some rather interesting results. It will be noted that the property offenses which make

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up almost 40 per cent of the complaints in chart No. 1 have doubled (83.2 per cent) here. In other words, the wayward minor procedure is used in the largest percentages of instances for offenses against property, chiefly larceny and associated offenses.

Offenses against public order which made up almost a half (48 per cent) in chart No. 1 are here reduced to less than one-tenth (7.7 per cent). These offenses, largely of a regulative or ordinance nature have been disposed of in so large a proportion of instances at the original hearing that very few of them remain to be disposed of at the final hearing. Final disposition of offenses in the categories of "violence" and "sex" vary very little from the original disposition at the time of the first hearing.

Chart No. 4. Complaint and Final Disposition

COMPLAINT	FINAL DISPOSITION				Total	Per Cent
	DIS-CHARGED ¹	SUS-PENDED SENTENCE	PRO-BATION	COM-MITTED ²		
PROPERTY	12	49	237	40	338	83.2
PUBLIC ORDER	2	13	14	2	31	7.7
WAYWARD MINOR		1	1		2	0.5
VIOLENCE		5	8		13	3.2
SEX		3	19		22	5.4
<i>Total</i>	14	71	279	42	406	100.
<i>Per cent</i>	3.4	18.0	68.9	9.7	100.	

¹ Includes: 11 dismissed; 3 discharged.

² Includes: 6 to Children's Village, 3 to Wassaic State School, 1 to Nassau State Hospital, 16 to State Vocational Institution, 1 to State School of Industry, 1 to Elmira Reformatory, 12 to New York City Reformatory, 2 returned as parole violators.

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The following chart which shows the days between complaint and disposition is an index of the amount of time which elapses between the original arraignment and the final court order disposing of the case. The largest number of elapsed days is in the category of property offenses and runs well over one month. The "straight wayward minor" complaints show the next largest number of elapsed days due, perhaps, to the court's desire to straighten out these differences between parent and son without resorting to any drastic court action.

Chart No. 5. Days Between Complaint and Disposition

DAYS BETWEEN			
COMPLAINT	NUMBER	TOTAL DAYS	AVERAGE DAYS
PROPERTY	584	22882	39.1
PUBLIC ORDER	726	7252	10.0
WAYWARD MINOR	37	414	11.1
STRAIGHT WAYWARD MINOR	35	1148	32.8
VIOLENCE	57	1368	23.0
SEX	77	2340	30.0
<i>Total</i>	1516	35404	23.4

The final chart lists the amount of bail required by the court for cases held for Special Sessions or the Grand Jury, the fines imposed, and the length of jail commitments. Discrepancy between the totals in each of the first two categories listed here and in chart No. 1 may be accounted for by the fact that the remaining cases were released on their own recognizance or to that of their parents. The average amount of bail for defendants held for Special Sessions ran slightly above \$500, those bound

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over to the Grand Jury were asked to post double this amount. Our inquiries did not go to the point of discovering in what percentage of the instances bail was actually posted, and how large a proportion of cases were actually remanded to jail.

Chart No. 6. Bail and Jail

	NO. OF CASES	AMOUNT OF BAIL		
GRAND JURY	2	\$ 100		
	2	200		
	3	300		
	33	500		
	37	1,000		
	4	1,500		
	4	2,000		
	4	2,500		
	1	3,500		
	4	5,000		
	<i>Total</i> 94	<i>Total</i> \$102,000	<i>Average</i>	\$1,085.10
SPECIAL SESSIONS	2	100		
	1	200		
	2	300		
	24	500		
	4	1,000		
	<i>Total</i> 33	<i>Total</i> \$17,000	<i>Average</i>	\$515.15
FINES	18	1		
	4	2		
	1	5		
	1	10		
	1	25		
	<i>Total</i> 25	<i>Total</i> \$66	<i>Average</i>	\$2.64
JAIL SENTENCE	22	1 day		
	13	2		
	2	3		
	1	5		
	1	30		
	<i>Total</i> 39	<i>Total</i> 89 days	<i>Average</i>	2.28 days

Fines were imposed in less than 2 per cent (1.6 per cent) of the total number of arraignments before the court, and it will be noted that the average of these was less than \$3. Of the 25 fines imposed, only two ran above \$10; two-thirds of the fines were for the very nominal amount of \$1.

Similarly, a very small percentage (2.5) of the total dispositions consisted of commitment to jail. Of these a sizable number were in default of a fine imposed by the court. Almost two-thirds of these commitments ran to a day; the average slightly over two days.

A brief bibliography on the problem of the adolescent offender in New York City is here appended:

The Adolescent Offender: A Study of the Age Limit of the Children's Court. Criminal Courts Committee, Charity Organization Society, New York, 1923.

Report of the Crime Commission. Legislative Document No. 114, Albany, 1932.

Proceedings of the Governor's Conference on Crime, the Criminal and Society. Albany, 1935.

Report of a Study of the Adolescent's Court of the Magistrates' Court of New York City, State Division of Probation, Albany, 1936.

Brill and Payne: *The Adolescent Court and Crime Prevention.* New York, 1938.

Harrison and Grant: *Youth in the Toils.* New York, 1938.

The Forgotten Adolescent: A Study of the Pre-trial Treatment of Boys Charged with Crime in New York City. New York Law Society, New York, 1940.

The Adolescent Boy and the Detention Prison: Committee on Crime Prevention. City Club of New York, 1940.

Blanshard and Lukas: *The Adolescents' Court Problem in New York City, a Preliminary Survey of Existing Procedure and an Emergency Plan.* Society for the Prevention of Crime. New York, 1941.

THE WAYWARD MINORS' COURT FOR GIRLS. Since the spring of 1936, there has been functioning as a separate part of the Women's Court in the Magistrates' Court system of New York City, a special session for girls between the ages of sixteen and twenty-one. The jurisdiction of this Court is city-wide and it operates under the straight wayward minor procedure contained in section 913 of the Code of Criminal Procedure.

The headquarters of this sessions are in the Women's Court, but a special day each week is set aside for the hearing of girls' cases in the new criminal courts building on Centre Street. During the year 1940, six justices presided over this Court; the presiding magistrate conducting the largest number of sessions during the year. Of 330 cases received by the Court in the year 1940, 264 (80 per cent) were referred for court action. This number varies but slightly from the number of cases received by the Court in 1939.

One of the interesting features of this Court is the "Intake Bureau" to which all complaints and petitions are initially referred. Like the Bureau of Adjustment in the Children's Court, this Bureau through its provision for preliminary investigation diverts to other agencies those cases where it is believed that an adjustment can be made without formal court action.

The Wayward Minor Court for Girls has made an important contribution to the problem of dealing with the adolescent offender, through its provisions for temporary detention in private agencies, some of which are equipped with special facilities for handling venereally infected and pregnant girls. The facilities of these private agencies are provided rather strictly on the basis of the girl's religious affiliations; as a result it is too often necessary, especially in the case of negro girls, to make use of the detention facilities for women.

All of the cases referred for action to this Court are handled as straight wayward minors. That is, they are not complained of for a violation of the criminal law, which may then be set aside and a wayward minor charge substituted, as is done in Brooklyn and Queens. The conditions for which these girls are referred to the Court are those clearly specified in the Wayward

Minor Law. They include disobedience, runaway, sex misconduct, and other problems originating chiefly in the family, and representing in many instances, a conflict between parents and daughter.

Wayward minor petitions are referred in the largest proportion of cases by parents, and where this is not possible the petition may be signed by a policewoman, a member of the Juvenile Aid Bureau of the Police Department, or an interested social agency. In this connection it may be noted that the private agencies play a larger part in the procedure of this Court than in that of any other special court for adolescents discovered anywhere in the State. In the early days of the Brooklyn Adolescent's Court, as noted above, the private agencies served as the unofficial probation arm of the court, but this was largely discontinued after the number of cases referred to these agencies became excessive. The private institutions to which the court now commits have been cooperating with the court since its establishment and have continued to take difficult and stubborn cases steadily through the five and a half years of the court's existence. It is doubtful whether, without these aids, the court could have continued to handle these cases, in the light of the paucity of public institutional facilities for girls between sixteen and twenty-one.

A necessary part of the court procedure is the physical and and psychiatric services upon which it must rely for the diagnosis of the medical, emotional and intellectual make-up of its clients. By obtaining the consent of the girl, the period of detention may be extended beyond the three-day period allowed by law, and this interval is used to make extensive examinations and to check further infection.

There is a special advantage to having a court of this type, specialized in the cases of girls, and city-wide in its jurisdiction. Because it is a court of first instance, and because it cooperates with the socialized branches of the Police Department, girls coming before this court are spared being booked at the police station and in the very largest percentage of cases, detention in the Women's Jail. Transportation is in all instances provided by other than official police vehicles. The manner in which the

case first comes to the court's attention takes it completely out of criminal court procedure and setting and makes its features parallel many of those found in the children's court.

There is little question but what this procedure has demonstrated the value and effectiveness of a socialized and individualized approach in behalf of the adolescent girl delinquent.

THE WAYWARD MINOR PROCEDURE IN THE COURT OF GENERAL SESSIONS. In the following words the District Attorney of New York County, Thomas E. Dewey, described the plan introduced by him in the Court of General Sessions in November of 1940:

"For youths between the ages of sixteen and eighteen, inclusive, who are without criminal records and who are not charged with crimes of violence, the probation department will, with the consent of counsel for the defendant, make a probation investigation before any trial is had. The defendant also will attend the psychiatric clinic before trial, instead of after conviction.

"If the facts ascertained during investigation indicate strong possibility of reform, the offender may be placed on probation as a wayward minor, and the indictment dismissed. Names of the offenders thus dealt with are not disclosed, and police records of their offenses are destroyed, providing they make good. If they fail to make good they are committed as wayward minors".

The wayward minor procedure in the Court of General Sessions is a pre-pleading procedure. All of the cases for whom this form of treatment is being considered are out on parole—the magistrate has so released them, or they are paroled by the court after it has received them on indictment. No one appears in the Court of General Sessions without an attorney. If he is not represented, the Court assigns counsel, and this applies, as well, in the cases of youths.

The procedure is used only where the defendant is prepared to plead guilty. After he has consented so to plead, no plea is asked on the wayward minor complaint because youths so held

are *adjudicated* and *not convicted*. The Court states that it has had no problem with any youth held for the wayward minor treatment who was not ready to plead guilty to the offense for which he stood indicted.

When the indictment is received from the Grand Jury and the offender is discovered to be a youth, he is continued on parole and referred to the Probation Department for investigation. The defendant—through counsel—gives his verbal consent on the record to waive his immunity not to have the circumstances of the instant offense investigated. This waiver is entered on the court order. From this point on the usual intensive probation investigation is made, including a physical, psychometric and psychiatric examination. The probation report is particularly detailed as to prior criminal record—name and fingerprints are cleared through police departments, the children's court, magistrates court, the department of correction, City and State parole departments, the Federal Bureau of Investigation, etc.

When the report is completed, the chief probation officer and the social service representative from the District Attorney's office discuss it and determine whether or not the youth should be treated as a wayward minor, taking only those adolescents whom they believe will make good on probation.

After this determination is made, a date is then set for hearing the case in chambers. At this time the probation officer and the District Attorney's representative hold a conference with the judge. The boy, his counsel and his parents are then called in, the case is discussed and the judge states the reasons for the decision to handle the case as a wayward minor. He then sits as a magistrate, the hearing and adjudication taking place informally. A day or two thereafter, the District Attorney asks for the dismissal of the indictment in open court. All of this procedure is centralized in Part I of the Court where arraignments are heard; the same judge who holds the wayward minor hearing presides at this Part.

From this point, the case is handled on probation under supervision or treatment as is any other case handled by the General Sessions Probation Department, in accordance with the following steps:

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1. an order is received from the court adjudicating the offender as a wayward minor and placing him on probation;
2. the court attendant delivers the youth to the Probation Department where he is turned over to the investigation division;
3. he is then interviewed by a case supervisor or by the chief of supervision in order to assure that his first contact will be made with an executive;
4. he is then introduced to the officer who will supervise him on probation;
5. a brief outline is written up of the case plus whatever has been learned from the boy;
6. the probation supervisor must within three months develop a program for the probationer, based on his needs, liabilities and assets. Every few months thereafter a summary of progress and revision of the treatment program is made;
7. upon completion of his probation term, the youth is discharged by the judge.

In this Department, great reliance is placed on long periods of probation: three years are usually given for a misdemeanor, five years for a felony, and terms may even run as long as ten years. It is in this kind of a setting that the probation conditions for the wayward minor are decided and his case supervised.

Because individualization of the offender determines whether or not he will be treated as a wayward minor, more offenders in this age group have been rejected than accepted for this procedure. Of 325 indictments of youths sixteen, seventeen or eighteen years of age, 145 pre-pleading investigations were made by the Probation Department. Of these, forty-two (29.0 per cent) were finally made wayward minors, which represented 12.1 per cent of the total age group. The balance were handled as regular criminal cases.

In a recent group of 56 cases held for pre-pleading investigations between the ages of sixteen and nineteen:

- (a) 41 were paroled
- (b) 8 were held on bail
- (c) 7 were detained in jail

- (a) of these, only 15 were held finally as wayward minors, 24 took a plea, of whom 16 were placed on probation and 8 were committed (2 to Napanoch); 1 was discharged on his own recognizance, and 1 case is still pending;
- (b) all of these were handled as wayward minors;
- (c) of these 5 pleaded guilty to petty larceny (3 of whom went to Coxsackie, 1 to New York City Reformatory, and 1 to Children's Village); 2 pleaded guilty to assault in the second degree (of whom 1 went to Elmira and 1 to State Prison).

The thorough investigation which precedes the determination to treat as a wayward minor, and the intensive probation oversight which follows in those cases which are so adjudicated, commends this procedure. These advantages, however, hardly compensate for its unfavorable features: the youth is treated by this plan only after the process of police, lower court, grand jury and perhaps the jail has had its effect. Functionally speaking, and in a court less generously furnished with provisions for detailed investigations and intensive supervision, there would be little to differentiate this plan from the plans now in operation in other county courts. There is nothing in this plan which could not be done, as this Committee believes it should be done, in a court of first instance, as soon after the commission of the offense as the arresting officer can bring the youth before such a court.

THE NEW YORK COUNTY "YOUTH COUNSEL BUREAU". In this report we have quoted figures from a New York Crime Commission Report to the effect that approximately 60 per cent of the youths, who are now run through the mill of our criminal courts, are finally found innocent or dismissed with no further supervision by the court. This number includes cases dismissed in the lower courts, cases in which "no bill" has been returned, as well as acquittals by the upper courts. Although these defendants may be completely innocent or are found not guilty, technically, of any offense, it is undeniable that the fact of their apprehension may be some evidence of their need for help.

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For this reason a Bureau has recently been created in the office of the District Attorney of New York County to receive referrals of cases between the ages of sixteen and twenty-one which have been dismissed by the Court of Special Sessions, or where the Grand Jury has failed to indict or where there has been an acquittal by the Court of General Sessions.

The Youth Counsel Bureau was set up in June 1941, with a staff consisting of a director—on leave from the Bureau of Adjustment of the Children's Court—and one representative each from the Community Service Society, the Catholic Charitable Bureau and the Jewish Board of Guardians.

These three case work representatives were appointed after interviews by the Governing Board of the Bureau. Their salaries are paid by their respective agencies; that of the director as well as certain incidental expenses are covered by private donations. Rent and telephone are supplied by the office of the District Attorney, secretarial services by the National Youth Administration.

As of October 15th, 1941 the Bureau has handled approximately eighty cases. This number by no means represents an estimate of the total work which the Bureau can—and eventually may—do. In some of the cases included in this total the Bureau had no contact with the clients themselves, who were directly referred to outside agencies for help.

When a youth is not indicted by the Grand Jury or is acquitted after a hearing, he is given a slip by the clerk of the court and referred to the office of the Bureau. Here his first question is as to the purpose of his visit. He suspects that perhaps there may be papers to sign, or that this is an indirect form of probation or other supervision. Because he is referred just after the court has terminated its control over him, he usually reports as he is told.

The attitude of the Bureau worker is one of voluntary assistance: the youth is told at the first interview that he is completely free either to accept or reject this help as he chooses. Because of the relief which the released or acquitted defendant feels as a result of his discharge by the Grand Jury or by the court, he

may leave with some unexpressed resentment toward the Bureau, and this first interview may be the last. In those cases where the young man is accompanied by his parent or where he clearly wishes some definite help, such as securing a job, and he accepts the proffered assistance of the Bureau, he has been found more likely to make a contact with the agency to which the Bureau then refers him. The work of the Bureau consists entirely in referring the youth to the community agency best equipped to render him the special service which he may require. Being entirely voluntary, the Bureau does not supervise or otherwise attempt to control or direct the youth in any way.

Bureau workers have been experimenting with a procedure which commits neither them nor the client—to the effect that “this is a thing you are expected to do”—which may delay the young man’s reaction until he has made an initial contact with the agency which can then be of help to him. The youth referred by the court wishes to forget his court experience and the fear associated with it as rapidly as possible and if these reactions can be delayed for a short period, the Bureau feels that it can then be of greater help. There is the additional fact that in many cases which are not indicted or which are discharged, there may be some degree of culpability despite the fact that the Grand Jury or the Court may not have considered the evidence sufficient to establish it.

The Bureau has had several instances of youths who rejected its aid when it was first proffered but who later returned to ask for assistance.

One of the values of this Bureau seems to be its influence on the socialization of the court process, particularly in the treatment and rehabilitation of the adolescent offender—in this case the offender who has been found not guilty. It is a leaven in the criminal court procedure and in time should come to have a definite effect on the attitude of youthful offenders generally toward the court, as well as upon the court itself.

The Bureau has been in existence for too short a time for its work properly to be evaluated. Beginning as it did during the summer recess, most of its time has been devoted to staff train-

ing and to developing policy. The Bureau needs further time to adapt itself to the functions and processes which comprise the criminal court procedure. Regardless of what else is done in the way of altering this court procedure for adolescents, there is little question but what the principle of the Youth Counsel Bureau is a commendable one. It is crime preventive in its ultimate purpose: to help correct those elements in his environment and personal situation which brought the offender into court—even though he was found innocent. The fact that this is done on a voluntary level, through the referral of cases to agencies which stand ready to help, does not minimize the value of the Bureau's work as helping to prevent the return of the young defendant to court on another complaint.

There is a close parallel between this procedure and the wayward minor technique as first introduced in the Magistrates' Courts of New York in 1932. In the latter instance, the court sought for some way of securing jurisdiction over a youth who, though discharged—for want of evidence or otherwise—was in need of some supervision.

The Youth Counsel Bureau, on the other hand, extends a purely voluntary help to the discharged or acquitted youth, which he may accept or reject as he chooses. The difference between these two procedures epitomizes the change which has taken place in social work thinking in the past decade.

With the non-criminal procedure which we have recommended for the hearing and adjudication of the cases of youthful offenders, there will be a greater opportunity for the introduction of all kinds of social services in connection with the work of the court. Among these should be included some measure of attention to the youth who, though discharged by the court, is nevertheless in need of further help. To this end we commend the plan of the Youth Counsel Bureau to the attention of the youth courts which will be created upon the enactment of the bills proposed in this report.

CHAPTER **VIII.** DRAFT ACTS FOR A YOUTH COURT

Introductory

One of the great difficulties confronting the administration of the criminal law is that the statutes under which our courts must operate are—to say the least—decades behind the advance of social theory and the status of public opinion. Each time that we attempt to narrow the breach between the demands of the criminal law and the accepted attitude of society in these matters, we find that meanwhile theory and public opinion have again advanced and our law is almost as backward as it was before being amended.

It is a truism that in any field of social legislation there exists a certain lag between what has come to be accepted and what our laws say about it. Innumerable examples may be cited from our legislative experience—both State and Federal—especially in the last decade. But in the realm of criminal law this lag seems always to be greater than in any other field. The reason for this may, perhaps, be found in the fact that our criminal law precedents go back to the very taproots of English law and in the further fact that we hesitate to disturb these precedents for fear of weakening the safeguards which have been thrown up about the liberties of the individual defendant.

The experience with capital offenses has been that the courts have in fact discontinued the imposition of the death penalty for many of these offenses long before they are removed from the

capital class by legislative enactment. As only one example: transportation as a form of sentence was abandoned in England at least twenty years before it was outlawed by statute.

The efforts made in the juvenile institution field between 1825 and 1900, heralded a new approach to the treatment of the delinquent child. Yet our criminal courts continued to have jurisdiction over these same delinquents and it was not until 1924 that all the children's courts of the State were freed from any association with the criminal court process. The fact that we are not yet thoroughly consistent in our treatment of children in chancery rather than criminal court fashion is seen by the remaining vestiges of criminal court terminology and procedure in the laws governing the operation of our excellent children's courts.

Any attempt on the part of courts to impose the harsh penalties permitted by the law is met by an attitude on the part of juries and others to mitigate this harshness. The best example of this is seen in the operation of the Baumes Law by which juries hesitate to find an offender guilty if his record showed three previous convictions for a serious offense.

On the other hand, the public generally has applauded rather than condemned the judge or the court which uses its discretion to shield deserving cases from the full rigors of the criminal law provisions. It is an interesting commentary upon our courts and upon the state of public opinion that not a single appeal has been taken from any of the extra-legal procedures employed by our courts to spare the youthful offender a conviction for a crime, when some such procedure as that of the Wayward Minor Law could be substituted in its place. A strict interpretation of any of the procedures employed by the courts described in the preceding chapter would immediately rule out the meritorious work which they have been doing. This has not occurred because of the realization that the criminal courts are behind the social thinking of the times and, therefore, any measures which they may themselves introduce to bridge this gap will receive only commendation.

English and American criminal courts, since time unknown, have had the power to reduce serious charges to less serious, in order that true justice may be done in the case of a defendant who, while he may be strictly held by the terms of a felony complaint, is nevertheless deserving—by reason of various mitigating circumstances—of a less rigorous conviction.

Likewise for many centuries, the factor of youth has been one of the most important of these "mitigating circumstances". The common law has held rather strictly to the magic number seven—and its multiples—in considering the cases of young offenders. Children under seven are considered incapable of committing a criminal offense, while in the case of those between seven and fourteen, the presumption of full accountability is waived, except as the prosecution may establish it. The age of twenty-one as the dividing line between minority and majority is the final expression of this rule of seven.

Whatever special measures for the treatment of youthful offenders may now exist, or be contemplated by the Legislature, are the direct result of the pioneering work which the children's courts have done. They have demonstrated for all the world to see that a non-criminal procedure is more effective than that of the criminal court in determining those measures which will, at the same time, most surely safeguard society and the future well-being of the child. This philosophy and this procedure underlie the special measures which, quite without legislative sanction, are now being employed by our courts in the case of offenders above children's court age.

This Committee is moved to make the recommendation contained in this report and drafted in the form of the two separate bills which follow, by its conviction that the time has come to legalize in forthright fashion and to make uniform throughout the State the best that is now being done for the youthful defendant.

Some criminal courts in the State have in the past reduced either to a lesser offense or to a charge of "wayward minor" those criminal complaints against youths which were referred to them. This is at best an evasive, dangerous, not to say, extra-

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legal process. The fact that the Legislature has enacted a bill allowing the Adolescent's Courts, so-called, of Kings and Queens County to continue their procedure up to July 1, 1942 does not legalize the work of these Courts, strictly speaking, prior to the enactment of this bill. The sole purpose of this stop-gap measure was to give this Committee and the Legislature an extension of time in which to determine finally the steps which our State should undertake. (See Chapter 10, pp. 217 and 218.)

Experience has proven that no amount of careful individualized dealing by a socialized court can successfully offset the harm done to the youthful offender through the demoralizing and sometimes brutalizing methods of police apprehension and investigation, and of detention prior to arraignment. It is imperative, therefore, that as soon as a youth is taken into custody that he be brought at once before the court which will hear his case, and this requires that it be a court of first instance. The Committee has so provided in the acts which it has drafted, and which it submits herewith.

These bills contain another fundamental principle which reverses the irregular procedure which has existed hitherto in the cases of adolescents. Instead of having the cases of youths presented to the courts by means of a criminal complaint, which must then somehow be set aside, these bills provide that such cases shall first be presented upon petition, in much the same manner as the cases of delinquent children now come before the children's courts. Instead of allowing the judge to make a determination as to whether or not a criminal complaint or a wayward minor complaint shall lie, as is now done, frequently without the benefit of an investigation into the offender's history, background and condition, these bills specify that the probation report shall precede any such decision; that the youth shall have an opportunity to convince the court that the protective rather than the criminal procedure shall be followed, and that the district attorney's recommendation in the matter shall also be heard. If the court determines, as a result of this hearing and on the basis of reports before it, that the offender shall be held as a youthful offender, the procedure remains entirely on a chancery basis. If

the court is persuaded that the welfare of society and the condition of the youth require that he be held on the criminal side, the case may then be summarily disposed of—if it is a matter coming under the jurisdiction of a magistrate—or the youth may be held for a higher court or for indictment by the grand jury.

This is the essence of the bills which are submitted below. The Committee believes that it has enunciated in them an important principle—that all youthful offenders who now come before the court shall first have an opportunity to be treated as the children's court now treats them—as young people “in need of aid, encouragement, and guidance.” This is not sentimentality; the Committee is not here urging that a tender and careless procedure be introduced into our courts for the handling of the cases of youthful offenders. But it is convinced that the time has come to place in the court system of our State a protective procedure which will give no special favor to anyone, because the granting of this protection is the privilege and right of every youthful defendant on his initial appearance before the court. At the same time, the interests of the public are safeguarded by permitting the case of a youthful defendant who requires to be treated by that method, to fall back into the stricter channels of the criminal law and criminal court procedure.

These bills have been carefully drafted and thereafter subjected to critical examination prior to submission to the Legislature. The Committee recommends their enactment, confident that their passage and application will assure to the young people of the State a greater measure of equitable and protective care and treatment than has been granted to them hitherto.

The Committee suggests to judges, probation officers, institutional personnel, educators, psychiatrists and social workers generally that they maintain a critical and evaluative attitude toward the Youth Courts which will be established under the terms of the bills which we here propose. We further recommend that this question be discussed not only at statewide conferences of these professional groups but also in the larger national bodies with which they are affiliated to the end that there may be a mutual exchange of ideas regarding the treatment of the adoles-

cent offender, and amendments offered from time to time such as may be necessary to render these laws more effective in the area to which they now apply.

An Act TO AMEND THE DOMESTIC RELATIONS COURT ACT OF THE CITY OF NEW YORK, IN RELATION TO THE DISPOSITION OF CASES INVOLVING MINORS UNDER NINETEEN YEARS OF AGE

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. There is hereby added to section two of chapter four hundred eighty-two of the laws of nineteen hundred thirty-three, entitled "An act to establish in and for the city of New York a court of domestic relations, to be known as the domestic relations court of the city of New York, and defining its powers, jurisdiction and procedure and providing for its organization," a new subdivision to read as follows:

13-a. Youth means any person, of either sex, who shall have attained his or her sixteenth birthday but shall not have attained his or her nineteenth birthday.

§ 2. There is hereby added to section two of such chapter, a new subdivision to read as follows:

15-a. Youthful offender means a youth who is delinquent in that he has violated any law of this state or any ordinance of the city of New York, except where such violation (1) is punishable by death or life imprisonment, or (2) is a violation of any traffic law, traffic ordinance or traffic regulation, which is not a felony or misdemeanor.

§ 3. Subdivision fourteen of section two of such chapter is hereby amended to read as follows:

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

14. Adult means a person [sixteen] *nineteen* years of age or older.

§ 4. Section five of such chapter is hereby amended to read as follows:

5. Divisions of the court. The court shall comprise [two] *three* divisions to be known as the "Children's Court," *the* "Youth Court" and the "Family Court," respectively.

§ 5. Section nine of such chapter, as amended by chapter three hundred sixty-two of the laws of nineteen hundred thirty-four, is hereby amended to read as follows:

§ 9. Additional justices. Upon the receipt by him of a certificate signed by two-thirds of the justices stating that in their opinion the business of the court requires it, the mayor may, from time to time, *either*, appoint additional justices for such time as said certificate states to be necessary, but in no case longer than for a full term of ten years; or, with the approval of the chief city magistrate *assign any duly appointed city magistrate having all of the qualifications specified in section six of this act to the work of the court. During such assignment, however, a city magistrate shall exercise all of the powers and be subject to all of the limitations of this act provided, however, that he shall serve without additional compensation. Upon the expiration of the term of any city magistrate during his assignment to the work of the court the mayor may appoint such magistrate a justice of the court if he has shown himself to be especially qualified for the court's work.*

§ 6. There is hereby added to such chapter a new section as follows:

46-a. *Separation of buildings and facilities. All of the activities of the youth court division shall be carried on in buildings which shall be physically separate and apart from the building used or occupied by any other division of the court, or any other court, except that where this is not practicable all rooms and facilities used by youths shall be physically separate and apart so as to be inaccessible from other parts of the same building in which any such other court or division shall be in session and shall have separate entrances; provided however that hearing*

rooms used by the children's division or the family division may also be used for the hearing of youths if at the time of such use such rooms, their approaches, waiting rooms and all other facilities used by such youths are not accessible to children or to adults charged with criminal offenses.

§ 7. There is hereby added to such chapter a new section as follows:

48-a. Rooms for youths. So far as possible a waiting room with a competent person in charge shall be provided for the care of youths brought before the youth court division. Unless directed by the court, youths shall not be permitted in the court room of the youth court division, except where the proceedings are in relation to the youth.

§ 8. Section fifty-two of such chapter, amended by chapter three hundred forty-six of the laws of nineteen hundred thirty-six and chapter nine hundred forty-three of the laws of nineteen hundred forty-one is hereby amended to read as follows:

52. Privacy of records. The records of any case, *including fingerprints and photographs* in either the children's court, *the youth court* or the family court shall not be open to inspection [except to members of the Bar.], *except that the* [The] petition, process, formal motions and other papers appropriate to a judgment roll on a case on appeal [however] shall be open to inspection by the parent, guardian, next friend or attorney of the child *or youth* in a proceeding in the children's court *or the youth court* and to the petitioner and respondent or their respective attorneys in a proceeding in the family court. However, the court in its discretion, *upon the application of an interested party and after proper inquiry*, may permit the inspection of any papers or records [.] *in any particular case if it is made to appear that the interests of the youth or of the child or of the family may be served thereby; provided, however, that any social agency* [Any] *duly authorized and approved by the court* [agency, association, society or institution to which a child is committed] may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record.

§ 9. There is hereby added to such chapter a new title, Title II-A, to read as follows:

TITLE II-A

THE YOUTH COURT DIVISION

Article 1. Jurisdiction.

2. Preliminary procedure.
3. Hearings; adjudications.
4. Validity; time of taking effect, et cetera.

§ 90-a. Jurisdiction. 1. There shall be a youth court division in each county of the city, which court shall have exclusive original jurisdiction within such county to hear and determine all cases or proceedings involving the hearing, trial, parole, probation, remand or commitment of youthful offenders.

2. When jurisdiction shall have been obtained by the court in the case of any youth, such youth shall continue for the purposes of this act under the jurisdiction of the court until he attains his twenty-first birthday unless committed, held to answer a criminal charge in another court or discharged prior thereto.

3. The youth court division shall, except as herein otherwise provided, have exclusive original jurisdiction in all cases against persons charged with a failure to obey any order of the court made pursuant to the provisions of this section, and any violation of an order made pursuant to the provisions of this section shall be punishable as a misdemeanor, but the court may, in its discretion, proceed with and adjudicate upon it as a contempt of court.

4. The court shall also have power to punish any person guilty of a criminal contempt as prescribed by article nineteen of the judiciary law.

5. Justices of the domestic relations court sitting in the youth court division shall have all the powers granted to city magistrates by the New York city criminal courts act.

90-b. Venue. All petitions or complaints over which the youth court division has jurisdiction shall be heard within the county where the offense is alleged to have been committed.

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ARTICLE II

PRELIMINARY PROCEDURE

Section 90-c. Petition.

90-d. Issuance of summons and other processes.

90-e. Service of summons.

90-f. Arrests; transfers from other courts.

90-g. Procedure.

90-h. Hearings; how held.

90-c. Petition. Any person may institute a proceeding respecting a youth by filing with the court a petition, verified by affidavit, stating such facts as will bring the youth within the jurisdiction of the court. The petition shall include the name and street address of the youth and a prayer to the court for such action or relief as the law provides. The title of the proceedings shall be "Court of Domestic Relations of the City of New York, Youth Court Division, County of . In the Matter of , a youth over the age of sixteen years and under the age of nineteen years."

90-d. Issuance of summons and other processes. Upon the filing of a petition the justice may, either forthwith or after an investigation which he may direct to be made, cause a summons to be issued, which shall be signed by him or by the clerk of the court, requiring the youth to appear at the court at a time and place named to show cause why such youth should not be dealt with according to law, or in his discretion, the justice may issue a warrant for the arrest of the youth. The court may also issue a subpoena, or in a proper case a warrant or other process, to secure or compel the attendance of any person whose testimony or presence at a hearing or proceeding is deemed by the court to be necessary; and any person who wilfully fails or refuses to obey any process of the court shall be guilty of a contempt of court, and, except as otherwise herein provided, may be punished therefor as prescribed by article nineteen of the judiciary law.

90-e. Service of summons. Service of a summons shall be made by delivery of a true copy thereof to the person summoned.

In case the summons cannot be served, or the person or persons served fail to obey the same, and in any case where the court believes that a summons might be ineffectual, or that the welfare of a youth requires that such youth shall be brought forthwith into the custody of the court, a warrant may be issued by the court against the youth. All papers, warrants, or other process shall be served by any peace officer of the city of New York, or of the county in which the court is located, when such officer is directed so to do by the court or a justice thereof.

90-f. Arrests; transfers from other courts. 1. Whenever any youth is arrested for any offense specified in subdivision fifteen-a of section two of this chapter with or without a warrant, it shall be the duty of the officer having such youth in charge immediately to notify the parent, guardian or other person responsible for its custody or control, or the person with whom such youth is domiciled, that such youth has been taken into custody; and forthwith with all convenient speed the officer shall directly and without his being first taken to the police precinct station house, take such youth to the youth court division located in the county in which the offense, if any, was committed, if the court is in session, and if not in session, then to the rooms, office, shelter or other place of detention designated by the board of justices for the reception of youths and the officer making the arrest shall immediately make and file a petition as hereinbefore provided. Nothing herein contained shall be held to prohibit the acceptance of bail or recognizance as provided in subdivision four of section five hundred and fifty-four of the code of criminal procedure. A youth court division shall be organized in the counties of New York, Bronx, Richmond, Kings and Queens and shall be open for the purpose of entering and receiving petitions every day of the year. In the event a petition or complaint shall be filed on a day when the court is not in session, a parent, guardian, attorney or friend of the youth may obtain a copy of such petition and apply at the nearest police precinct station for the fixing of bail and have bail fixed for the appearance of said youth at the next session of the youth court division.

2. In no event shall any youth be at any time detained in any

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room, office, shelter or other place wherein are also detained at the same time either children or adults.

3. When any person is brought before any magistrate or other court for arraignment, hearing or trial, and it is found that such youth is over the age of sixteen years and under the age of nineteen years, such magistrate or court shall immediately by order transfer the case or proceeding to the part of the youth court division located in the county having jurisdiction of the case, and shall direct that the youth shall forthwith be brought before and delivered to this court, if it be in session, and if it is not in session, then to the rooms, office, shelter or other place of detention designated by the board of justices for the reception of youths.

90-g. Procedure. Where the method of procedure in a case, action or proceeding in which the court has jurisdiction is not prescribed by this act, such procedure shall be the same as provided by law for other courts exercising like jurisdiction, or by the rules adopted by the board and the court shall have such jurisdiction as may be necessary to enable it to carry out and enforce the provisions of this act. The presiding justice may provide for holding in any county of New York city such special parts of the youth court division for any specified classes of offenders to be held at such times and places subject to the provisions of this title as he shall determine.

90-h. Hearings; how held. All cases in which youths are involved, shall be heard separately and apart from the trial or hearing of cases against adults or children. The court shall have power upon the hearing of any case involving any youth, to exclude the general public from the room wherein the said hearing is held, admitting thereto only such persons as may have a direct interest in the case.

ARTICLE III

HEARING; ADJUDICATIONS

Section 90-i. Custody of youth; release.

90-j. Place of detention.

90-k. Hearings and judgments.

90-l. Criminal proceedings.

Section 90-m. Right of youth to be dealt with as an adult.

90-n. Immunity.

90-o. Adjudication not to serve as a disqualification.

90-p. Mental and physical examination; treatment.

90-q. Modification, setting aside or vacating of judgment.

90-r. Visits to institutions.

90-s. Religion of custodial persons and agencies.

90-t. Additional expenses made necessary by act.

90-u. Construction of act.

90-i. Custody of youth; release. If it appears from the petition that the interests of justice require the immediate apprehension of a youth, a justice may endorse or cause to be endorsed upon the summons an order that the officer serving the same shall at once take such youth into custody or he may issue a warrant as provided by law.

Any youth in custody may be discharged by the court, or pending final action in his case the youth may be released on bail or paroled in the custody of a parent, guardian, probation officer or other person, or remanded to the custody of a duly authorized agency, association, society or institution designated by the court which may direct that such youth shall be brought before the court at a time specified.

90-j. Place of detention. No youth coming within the provisions of this act shall be placed in or committed to any prison, jail, lockup or other place or shall be transported in any vehicle where such youth can come in contact at any time or in any manner with any adult or child who has been found neglected or delinquent, or been convicted of a crime, or who is under arrest, or who is awaiting action on a petition, complaint or indictment. Unless suitable accommodations for the detention of youths, held for hearing or disposition or as material witnesses shall have been provided, the presiding justice generally, or the justice in the specific case presiding, may, for the purpose of carrying into effect the provisions of this act, arrange for such youth or youths temporarily to board or lodge in a private home or in the custody of some fit person, subject to the supervision of the court; or the court or a justice may, by order, direct any

duly authorized association, agency, society or institution maintaining, in accordance with the law, a suitable place of detention for youths, to provide temporary care in such place of detention for any youth detained under the jurisdiction of the court or subject to its orders or supervision. The reasonable cost of such maintenance, and the maintenance of youths committed by the court, shall be provided by the city of New York.

90-k. Hearings and judgments. Upon the return of a summons or other process, or after any youth has been taken into custody, he shall immediately be taken before a justice of the court, if the court be in session, or if it is not in session, at the next session, for preliminary hearing. If, upon such preliminary hearing, the court shall find that the youth is subject to its jurisdiction, the court shall set a time for a final hearing and shall refer the case to an appropriate officer of the court who shall inquire into the habits, surroundings, conditions and tendencies of the youth so as to enable the court to render such order or judgment as shall best conserve the welfare of the youth and carry out the objects of this act. The court may in its discretion order the fingerprinting and photographing of any youth. The court may from time to time adjourn the hearing and pending final action place the youth in the custody of a parent, guardian, relative or other fit person and, if the court so directs, under the supervision of a probation officer.

The court, having before it a report including the results of such examinations as the court in its discretion may order, and after the district attorney has had an opportunity to recommend to the court whether or not the youth should be prosecuted for the crime or offense which he is alleged to have committed, shall determine whether the youth is a youthful offender within the meaning of section fifteen-a of this act, and, if it so finds, shall determine whether it will best conserve the welfare of the youth and of society, and best accomplish the objects of this act to relieve the youth from criminal prosecution. If the material facts alleged in the petition are not sustained by the preponderance of competent evidence, the petition shall be dismissed and the youth discharged. If the youth is found to be a youthful

offender who should be relieved from criminal prosecution, the court shall render judgment in one of the following ways:

- a. Place the youth in his own home or in the custody of a relative or other fit person subject, however, to the supervision of a probation officer and to the further orders of the court;
- b. Commit the youth to the care and custody of a suitable institution maintained by the state or any subdivision thereof, or to the care and custody of a duly authorized association, agency, society or institution;
- c. Require the youth to make restitution from the youth's own earnings, in such manner as the court may determine, to anyone injured by a violation of law for which the court finds the youth to be responsible or, in the alternative, remand, commit or place on probation as herein provided;
- d. Suspend judgment;
- e. Render such other and further judgment, or make such other order or commitment as the court may be authorized by law to make.

A youth may be placed and continued on probation for such time as the court may deem proper, but such period shall not extend in any case beyond his twenty-first birthday. In any case of a violation of the probationary conditions, the court may impose upon the probationer, at any time prior to his twenty-first birthday and irrespective of his age at the time of such violation, any penalty or penalties which it might have imposed before placing him on probation.

90-1. Criminal proceedings. In the event that the court shall determine that the youth should not be relieved from prosecution, it shall immediately direct that a formal complaint be filed charging the youth with the crime or offense which he is alleged to have committed and shall fix a time for a hearing on such complaint. At such hearing a justice of the court, sitting as a magistrate, shall determine, as otherwise provided by law, whether there is sufficient evidence to hold the youth to answer criminal charges in the appropriate court; or, if the charge be one over which a magistrate has summary jurisdiction, as con-

ferred by the New York city criminal courts act, the court shall render final judgment as provided for by law.

If the court finds that there is sufficient evidence, the youth shall be held to answer to the grand jury or to the court of special sessions as the nature of the court's finding may require, and the court shall by order direct that the record of the proceeding before the judge sitting as a committing magistrate be forwarded to the district attorney and the court may fix the amount of bail to be furnished by or on behalf of the youth or may parole him for his appearance to answer the charges pending against him.

90-m. Right of youth to be dealt with as an adult. At any time after the filing of a petition and before the court has rendered judgment after final hearing the youth may demand that the charges against him be determined in accordance with the provisions of law as if he were an adult. Whereupon the court shall dismiss the petition and proceed in the same manner as provided for in section ninety-l of this title.

90-n. Immunity. Upon the court's determination that a youth is a youthful offender who should be relieved from criminal prosecution such youth shall be immune from any prosecution or penalty except as provided in this act, for the crime or offense alleged in the petition or which he is adjudged to have committed and discharge from probation shall immunize him from further prosecution or penalty until and unless a new offense is committed.

90-o. Adjudication not to serve as a disqualification. No determination made under the provisions ninety-k of this title shall operate as a disqualification of any youth subsequently to hold public office or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no youth shall be denominated a criminal by reason of such determination, nor shall such determination be deemed a conviction. Neither the fact that a youth has been before the youth court for hearing nor any confession, admission or statement made by him to the court or to any officer thereof before he shall have attained his nineteenth birthday, shall ever be admissible as evidence against

him or his interest in any other court, except where the proceedings in the youth court were held in pursuance of sections ninety-l and 90-m of this title. Nothing in this section contained, however, shall be construed to prevent any court in imposing sentence upon an adult after conviction from receiving and considering the records and information on file in the youth court with reference to such adult when he was a youth, or shall be construed to prevent this court from considering the same upon a subsequent occasion.

90-p. Mental and physical examination; treatment. The court in its discretion, during or after a hearing, may cause any youth within its jurisdiction to be examined by a physician duly licensed as such by the state of New York or by a psychologist or psychiatrist appointed or designated for the purpose by the court, or during or after a hearing, may remand such youth for physical or psychiatric study or observation to the department of hospitals of the city of New York for a period not to exceed a total of thirty days. If at any time it shall appear to the court that any youth within its jurisdiction is mentally defective, the court may cause such youth to be examined and if such youth shall be found to be mentally defective, the court may commit such youth. Whenever a youth within the jurisdiction of the court and under the provisions of this act appears to the court to be in need of surgical or medical care, a suitable order may be made for the treatment of such youth in his home, in a hospital or other suitable institution, and the reasonable expenses thereof shall be a charge upon the city of New York.

90-q. Modification, setting aside or vacating of judgment.

1. Any order or judgment made by the court in the case of any youth committed by virtue of any proceeding may be vacated or set aside or modified as permitted by law.

2. In any proceeding affecting a youth, the court may stay execution, set aside or arrest judgment, or grant a new trial or hearing, on any of the grounds, authorizing any court of criminal jurisdiction so to do. The court may entertain an application to that effect by a duly authorized agency, association, society or institution, or by any interested person acting on behalf

of the youth, or may act on its own motion on giving proper notice to interested parties or to any agency, association, society or institution having custody of the youth.

3. The court may at any time during the progress of a proceeding arising under any provision of this act vacate any commitment previously made where it can be shown to the satisfaction of the court that a mistake of fact was made in adjudicating the youth's religion or may on its own motion or on application, after giving reasonable notice to interested parties and to the agency, association, society or institution having custody of the youth, proceed with judgment, consistent with the religion of the youth, as if such erroneous commitment had not been made, or may make such other or further order or commitment as shall to the court seem just.

90-r. Visits to institutions. At least once each year it shall be the duty of the justices to cause each institution to which a youth shall have been committed by the court during the year to be visited and inspected by at least one of the justices.

90-s. Religion of custodial persons and agencies. 1. Whenever a youth is remanded or committed by the court to any duly authorized association, agency, society or institution, other than an institution supported and controlled by the state or a subdivision thereof, such commitment must be made, when practicable, to a duly authorized association, agency, society or institution under the control of persons of the same religious faith or persuasion as that of the youth.

2. Whenever any youth thus committed is placed by any such association, agency, society or institution in a family, or in the home, or in the custody, of any person other than that of its natural or adopted parent or parents, or when so placed or paroled directly by the court, such placement or parole must, when practicable, be with or in the custody of a person or persons of the same religious faith or persuasion as that of the youth.

3. The provisions of subdivisions one and two of this section shall be interpreted literally, so as to assure that in the care, protection, guardianship, discipline or control of any youth his religious faith shall be preserved and protected by the court. But

this section shall not be construed so as to prevent the remanding of a youth, during the pendency of a proceeding, to a duly authorized society or place of detention designated by the board of justices, nor to the placing of a youth in a hospital or similar institution for necessary treatment.

4. The words "when practicable" as used in this section shall be interpreted as being without force or effect if there is a proper or suitable person of the same religious faith or persuasion as that of the youth available to be designated as custodian or to whom control may be given; or if there is a duly authorized association, agency, society or institution under the control of persons of the same religious faith or persuasion as that of the youth, at the time available and willing to assume the responsibility for the custody of or control over any such youth.

5. If a youth is placed in the custody, or under the supervision or control, of a person or of persons of a religious faith or persuasion different from that of the youth, or if a youth is remanded or committed to a duly authorized association, agency, society or institution, or to any other place, which is under the control of persons of a religious faith or persuasion different from that of the youth, the court shall state or recite the facts which impel it to make such disposition and such statement shall be made a part of the minutes of the proceeding.

6. Any youth placed or committed under order of the court shall be subject to such visitation, inspection and supervision as any duly authorized state department, board or bureau shall provide for or require.

90-t. Additional expenses made necessary by act. The salaries and other expenses made necessary by any provision of this act shall be paid out of the treasury of the city of New York. Such payments shall be made in such manner as provided by law upon the certificate of the presiding justice certifying that the additional salaries and expenses have been made necessary by any provision or provisions of this act. The number of additional probation officers which the presiding justice shall certify to have been made necessary by this act shall be based upon an estimated case load of fifty cases for each probation officer, plus seven investigations per calendar month.

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90-u. Construction of act. This act shall be so construed that the care, guidance, training, control and discipline of the youths brought before the court shall be in a manner calculated to guard them from association with crime and criminals, to the end that they may be corrected and rehabilitated and the protection of society more surely safeguarded.

ARTICLE IV

VALIDITY; TIME OF TAKING EFFECT; ET CETERA

Section 90-v. Effect of other laws.

90-w. Validity of act.

90-x. Time of taking effect.

90-v. Effect of other laws. All laws and parts of laws, whether general, local or special, which are inconsistent with or in conflict with, or repugnant to any provision of this act shall be deemed not to apply.

90-w. Validity of act. If any provision of this act is held by any court to be invalid, such decision shall not effect the validity of any other provision of this act.

90-x. Time of taking effect. This act shall take effect July first, nineteen hundred forty-two.

Analysis of the Youth Court Act for New York City

(BY AMENDMENT OF THE DOMESTIC RELATIONS COURT ACT OF THE CITY OF NEW YORK)

In order to accomplish the purposes for which this Act was drafted, it is submitted in two parts: The first of these amends seven sections of the Domestic Relations Court Act of New York City, the second establishes a Youth Court Division in the Domestic Relations Court.

The first amendment (p. 161, lines 17-19) adds to the Domestic Relations Court Act a new definition—that of a "youth". This definition includes persons who are sixteen, seventeen and eighteen years of age. The reason for limiting the application of this Act to youths in these three years is because existing procedures

in New York City for dealing with the adolescent offender have demonstrated that this is a fairly homogeneous group, containing a not over-large proportion of offenses of a violent nature.

The second section of the Domestic Relations Court Act to be amended (p. 161, lines 22-27) defines a new status—that of "youthful offender". In order to bring this Act into conformity with the children's court section of the Domestic Relations Court Act it was necessary to define a youthful offender, further, as "delinquent". This word was also added in order to meet the State constitutional provision (Article VI, section 18) empowering the Legislature to ". . . establish children's courts, and courts of domestic relations, as separate courts, or as parts of existing courts, or courts hereafter to be created, and may confer upon them such jurisdiction as may be necessary for the correction, protection, guardianship and disposition of *delinquent, neglected or dependent minors*. . ."

Offenses which if committed by adults would be punishable by death or life imprisonment are exempt from the jurisdiction of this new court, as they have been in the children's court. These offenses are so definitely and seriously criminal in nature and the penalties are so severe that they should not be included in the jurisdiction of a court which will be mainly non-criminal in its proceedings and will have no jury facilities.

At the other end of the scale, traffic offenses are also excluded because they are entirely regulative in nature and no moral element is involved. These now make up approximately two-thirds of all the offenses for which youths sixteen, seventeen and eighteen years of age are arrested, according to reports of the Police Commissioner.

Other infractions of regulations and ordinances are included because—as in the case of peddling, gambling, begging and similar violations—there may be some need for socialized treatment by the court of the conditions underlying such activity.

The third amendment (p. 162, lines 1 and 2) defines an adult as a person over nineteen years of age, in order to bring this definition into conformity with the new definition of a youth—from sixteen to nineteen.

The fourth amendment (p. 162, lines 5-7) creates in the Court of Domestic Relations a new division—the "Youth Court" in addition to the existing Children's Court Division and Family Court Division.

The next amendment, (p. 162, lines 11-26) adds to the present provisions in the Domestic Relations Court Act relative to the appointment of justices, ten additional lines permitting the Mayor to appoint to the justices of this Court such city magistrates as may be qualified for this work in accordance with the provisions of Section 6 of the Domestic Relations Court Act: ". . . Persons who because of their character, personality, tact, patience and common sense are specially qualified for the Court's work".

The reason for the inclusion of this section is to allow to the newly created Youth Court the appointment of such judges now in the magistrates' courts as have demonstrated unusual ability and fitness in the handling of adolescent offenders. The Adolescent's Courts in New York City have been in existence for the last six years during which time they have gained much valuable experience in the handling of this particular age group. Establishment of the Youth Court Division in the Court of Domestic Relations will result in certain difficulties and it has been thought best to provide for the transfer of certain specially qualified city magistrates to the Domestic Relations Court with the understanding that they would be assigned to Youth Court work in order to facilitate the administration of this court and the special problems with which it will be called upon to deal.

The next amendment (p. 162, lines 29 through p. 163, line 5) provides that separate buildings, quarters and facilities shall be assigned to the Youth Court and that these must be completely distinct and apart from the quarters now used for the hearing of cases of children and adults.

One of the most important and valid objections to the present criminal court dealing with youthful offenders is that such youths are commingled with adult criminals. This section insulates such youths entirely from any adult coming into the family court. Furthermore, because the offenses committed by youths are more serious and their conditions more difficult than those of children

brought before the court, youths are segregated from this younger group as well. We regard this section as one of the most important in this Act.

The following amendment to the Domestic Relations Court Act (p. 163, lines 8-13) relative to facilities for the court establishes a waiting room for youths and specifies that only the young person involved in a proceeding may be permitted in the court-room. This parallels section 48 of the Domestic Relations Court Act.

The next amendment (p. 163, lines 18-37) revises existing section 52 of the Domestic Relations Court Act, which has been several times previously amended. In the opinion of the Committee, this section now fully safeguards the privacy of records relating to children, youths and families coming before the Court of Domestic Relations, and at the same time insures that legitimate and responsible persons and agencies will have access to these records.

The balance of this Act—Title II A—refers entirely to the new Youth Court Division and comprises the provisions necessary to describe its jurisdiction, powers and procedure. This Title is inserted in the Domestic Relations Court Act, between the Title referring to the Children's Court Division and the Title referring to the Family Court Division.

Subdivision 1 of the first section—90-A (p. 164, lines 11-15) creates a Youth Court Division for each of the five counties of New York City, and gives it exclusive and original jurisdiction over the cases of youthful offenders.

Subdivision 2 of this section (p. 164, lines 16-20) gives the court continuing jurisdiction, once obtained, until the youth's twenty-first birthday. This provision precisely parallels corresponding section 83, paragraph 3 in the Domestic Relations Court Act.

Subdivision 3 (p. 164, lines 21-28) parallels the corresponding section 61, subdivision 4, of the Domestic Relations Court Act.

Subdivision 4 of this section (p. 164, lines 29-31) parallels section 61, paragraph 5 of the Domestic Relations Court Act.

Subdivision 5 (p. 164, lines 32-34) gives to the judges of the Domestic Relations Court, sitting in the Youth Court

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Division, the powers of city magistrates. This is done in order to empower them to preside at the criminal procedure outlined in section 90-L, following. These judges are hereby enabled to sit as committing magistrates, to preside at preliminary hearings, to set bail, etc. By chapter 366 of the Laws of 1941, which added an additional subdivision to section 147 of the Code of Criminal Procedure, judges of children's courts were made magistrates, a status which they were not considered to have prior to the enactment of this law. As magistrates, judges of this court will also have jurisdiction over wayward minors.

Section 90-B (p. 164, lines 35-37) limits the jurisdiction of the court to offenses committed within its particular county. This provision was included in order to forestall motions before the court for a change of venue.

Section 90-C (p. 165, lines 9-18) permits "any person" to initiate a proceeding in the Youth Court by filing a petition. Filing of a petition rather than a complaint has been specified in order to bring a youth to the attention of the court by a non-criminal route. This definitely establishes the court's initial interest on the equity or chancery side, as in the children's court. This is one of the most essential features of this Act. In all the existing procedures for dealing with the adolescent offender in New York City—and up-state—cases of youths are referred to the court initially by means of a regular formal criminal complaint. The steps which these courts now take consist in the reduction of the complaint—by one questionable means or another—to the status of a wayward minor or some such other non-criminal basis.

The method specified in this bill is the very reverse of that found in existing procedures for adolescent offenders. *All* cases of youths brought to the attention of the Youth Court come in originally via non-criminal petitions. It will be seen later that where the court determines that such a petition shall not lie, the directing of the filing of a criminal complaint may be substituted. (See pp. 183 and 184 below). It will be noted that the proceedings are titled "in the matter of" rather than "Vs".

Section 90-D (p. 165, lines 19-33) refers to the issuance of a

summons, warrant, subpoena or other process to bring the youth before the court as well as to secure the attendance of witnesses and others. This parallels section 72 of the Domestic Relations Court Act with the exception that parents are not specifically included.

Section 90-E (p. 165, line 34 through p. 166, line 9) parallels section 73 of the Domestic Relations Court Act relative to the service of a summons.

Subdivision 1, section 90-F (p. 166, lines 10-36) parallels section 74, subdivision 1, of the Domestic Relations Court Act, with the exception that places of detention are all subject to designation by the Board of Justices, and no particular society or agency is mentioned. This subdivision also specifies that the court be organized for the reception of petitions and the holding of preliminary hearings every day of the year, as is now provided in the magistrates' courts.

Subdivision 2, section 90-F (p. 166, line 37 through p. 167, line 2) specifies that youths shall be detained separately from both children and adults. This recommendation parallels the provision above regarding separate quarters, apart from both children and adults in the hearing of cases of youthful offenders.

Subdivision 3, section 90-F (p. 167, lines 3-12) provides that when persons discovered to be youths between the ages sixteen and nineteen are brought into any other criminal court in the City, such youths shall immediately be transferred to the Youth Court Division in that county. This provision implements section 90-A above, giving the court exclusive original jurisdiction over the cases of youthful offenders. It parallels section 74, paragraph 2 of the Domestic Relations Court Act.

Section 90-G (p. 167, lines 13-23) describes certain procedural steps. It provides that the procedure in the Youth Court, when not otherwise prescribed in this Act, shall be according to the procedure and rules in the children's court. It further gives the Board of Justices power to adopt rules to govern the Youth Court procedure. Lines 19-23 regarding the holding of special parts of the Youth Court for specified classes of offenders are included in the event that the court experience merits such separate parts

for the hearing, for example, of wayward minor cases, certain regulative offenses, the cases of girls, etc.

Section 90-H (p. 167, lines 24-30) parallels section 77 of the Domestic Relations Court Act and further implements one of the important provisions of this Act, namely, that the cases of youths be completely separate and apart in every particular, from those involving adults or children.

Section 90-I (p. 168, lines 10-15) parallels section 81 of the Domestic Relations Court Act, with no important change.

Section 90-J (p. 168, line 16 through p. 169, line 7) parallels section 82 of the Domestic Relations Court Act, practically verbatim. The only addition is the requirement that youths shall not be transported in any vehicle with an adult or a child who is under court control. This section effectively removes youths not only from association with adults or children but, more important, permits the detention of such youths on a non-penal level through provision for remand to private homes, agencies or societies or in the custody of private persons.

The first paragraph of section 90-K (p. 169 lines 8-24) is based upon, and is a detailed expansion of section 83 of the Domestic Relations Court Act. This paragraph provides that the youth must be taken before a justice of the court *immediately* upon the return of a summons or *immediately* upon being taken into custody. This provision reduces to a minimum the amount of time which a youth may spend in detention even though such detention no longer includes, as it did formerly, jails, lockups or other places where adults are confined. Police questioning, line-ups, fingerprinting and photographing, and possible brutality are all obviated by this provision.

The first paragraph of section 90-K, furthermore permits the court to refer the case for an investigation by a probation officer. In the various schemes now used throughout the State for special dealing with youths, the necessity for an investigation prior to any disposition has been handicapped by the fact that the youthful defendant has a right not to be investigated, and not to have the circumstances of the instant offense examined into by the court until after he has pleaded or been found guilty, and sentence is

to be imposed. Courts using these various schemes at the present time are correct in their requirement that the youthful defendant either directly or through counsel must waive this right. Under the procedure outlined in this Act, where the case does not come in on a criminal complaint and where a criminal conviction cannot follow directly, because the chancery procedure must first be used, this obstacle to a full investigation of all the circumstances in the youth's background, including the offense which he is alleged to have committed, is completely obviated.

This paragraph also permits the court, in its discretion, to fingerprint or photograph the youth in order to clear for a possible prior record through other courts, parole boards, police departments, etc.

The second paragraph of this section (p. 169, line 25 through p. 170, line 2) is actually the nub of this Act. It provides for the court to make an important decision: whether the circumstances of the offense committed and of the youth's background merit his relief from criminal prosecution and his continuance on the *petition* that he is a youthful offender, or whether he shall not be so relieved and thereafter held on a criminal complaint. In its determination of a specific course among the several which it is authorized to make, the court is guided by the report of the probation officer, the results of other investigations—medical, psychological or psychiatric—and the recommendation of the district attorney. Once the district attorney has concurred in the decision that the youth should be relieved of criminal prosecution and continue to be held as a youthful offender, he and his role disappear entirely from this procedure. Through him the People have had their opportunity to decide whether or not the youth shall be held as a criminal, and once waived, no further element of the criminal process enters into the procedure or deliberations of the Youth Court.

Adjudication as a "youthful offender" is tantamount to a finding that a child is a "juvenile delinquent". The various judgments which the court may then make, (p. 170, lines 3-19) are largely drawn from section 83 of the Domestic Relations Court Act.

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Subdivision a—see Domestic Relations Court Act, section 83, subdivision (b).

Subdivision b—section 83 (c).

Subdivision c—section 83 (d). The Youth Court Act further provides that a youth may be required to make restitution from his earnings.

Subdivision d—section 83 (a).

Subdivision e—section 83 (g).

Unlike section 83 (e) of the Domestic Relations Court Act, this section of the Youth Court Act does not specifically provide for continuing the proceeding. This provision was excluded because, although any court may, in its discretion, continue the hearing from time to time, it was not thought necessary to specify this power, in order thus to emphasize the value of speedy hearing and adjudication of the cases of youths. The criminal court process, especially in its dealing with youths, permits a large number of continuances and postponements, all of which combine to permit the defendant many opportunities to elude court action.

Paragraph 4 of section 90-K (p. 170, lines 20–27) parallels the delinquent child provisions of paragraph 3 of section 83 of the Domestic Relations Court Act relative to placing and continuance on probation up to the twenty-first birthday.

Section 90-L (p. 170, line 28 through p. 171, line 2) specifies the alternative procedure which the court may employ in the event that the youth is not continued on the youthful offender petition and it is decided that he shall be held for criminal prosecution. In this case the court is empowered to direct the filing of a formal complaint.

At the hearing on this complaint, the court is given several further alternatives: to exercise summary jurisdiction and render final judgment in accordance therewith, if the charge is one over which a magistrate has jurisdiction; to hold the youth for the court of special sessions; to bind him over to the grand jury; to discharge the case.

It is to be expected that the justice presiding at a hearing on the formal complaint will not be the same justice who presided at the hearing at which it was determined that a complaint should

be filed in place of the youthful offender petition. However, this provision was not made mandatory in the law because it may not always be possible for the court to follow it. There are many instances in which a judge sits twice in the same case without in any way jeopardizing a particular defendant's right to an unbiased and unprejudiced trial.

This section further provides (p. 171, lines 3-11) that in those instances where the youth is held for a higher court or for the grand jury, only such part of the record of the proceedings as was before the judge when he sat as a committing magistrate shall be forwarded to the district attorney. This provision was included in order to avert the possibility that any part of the record—probation officer's report; prior criminal record; mental, physical or psychiatric examination; inquiry into the instant offense, shall go up to the prosecutor's office, with the likelihood that the right of the youthful defendant to a fair trial would thereby be prejudiced or endangered.

Section 90-M (p. 171, lines 12-18) permits the youth at any time in the proceeding to demand his right to be treated under the provisions of the criminal law, as if he were an adult. This is done to insure against the rare event of an appeal from the initial non-criminal procedure in the court, and to preserve the right to a trial by jury.

Section 90-N (p. 171, lines 19-26) relieves the youth from any further prosecution or penalty for the offense alleged in the petition upon which he was adjudicated a youthful offender. This procedure is clearly included in order to meet the constitutional safeguard against double jeopardy.

Section 90-O (p. 171, line 27 through p. 172, line 9) is based on section 84 of the Domestic Relations Court Act, with only the necessary changes included to bring the latter into conformity with this Youth Court Act.

Section 90-P (p. 172, lines 10-27) is based upon a parallel provision in section 85 of the Domestic Relations Court Act. Provisions relating to physically handicapped children are excluded as well as the provision empowering the Court of Domestic Relations to order the child's parent or rightful guardian to pay for

medical, surgical or hospital care, because their criminal liability for such care ceases after the child reaches his sixteenth birthday.

Section 90-Q (p. 172, line 28 through p. 173, line 14) parallels the important provision from corresponding section 86 of the Domestic Relations Court Act.

Subdivision 1, of section 90-Q (p. 172, lines 28-31) differs from the Domestic Relations Court Act by its elimination of the provision contained in the latter Act relative to petitions to the court for the release, or discharge, or placing on probation in lieu of institutional commitment, of a child committed by the court to an institution, society, agency, etc.

Subdivision 2 (p. 172, line 32 through p. 173, line 3) is in all important respects the equivalent of section 86, subdivision 2, of the Domestic Relations Court Act.

Subdivision 3 (p. 173, lines 4-14) parallels section 86, subsection 3, of the Domestic Relations Court Act verbatim.

Section 90-R (p. 173, lines 15-18) follows section 87 of the Domestic Relations Court Act.

Section 90-S (p. 173, line 19 through p. 174, line 27) parallels section 88 of the Domestic Relations Court Act, except insofar as the provisions in this latter Act relative to guardianship and adoption are inapplicable to the Youth Court Act.

Section 90-T (p. 174, lines 28-38) relates to the interpretation which shall be placed upon the entire Act, the purpose of which is the rehabilitation of youth and the protection of society.

Section 90-U (p. 175, lines 1-6) frees any provision of this Act from other laws which may be inconsistent with, or contradictory or repugnant to any provision of this Act.

Section 90-V (p. 175, lines 12-15) is a "saving clause" which prevents the invalidation of the entire Act if any provision of it shall be found invalid.

Section 90-W (p. 175, lines 16-18) provides for the taking effect of this Act on July 1, 1942, at which time the Adolescent's Courts, so-called, in the Magistrates' Courts of Kings and Queens Counties, shall discontinue operation, under the provisions of chapter 940 of the Laws of 1941.

An Act TO AMEND THE CHILDREN'S COURT
ACT OF THE STATE OF NEW YORK, IN RELATION TO THE
DISPOSITION OF CASES INVOLVING MINORS UNDER NINE-
TEEN YEARS OF AGE

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Subdivision one of section two of chapter five hundred forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure, therein," as last amended by chapter three hundred ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows

1. When used in this act unless otherwise expressly stated or unless the context or subject matter requires a different interpretation "court" without modification means the children's court; "judge" means the judge of the children's court established by this act; "child" means a person less than sixteen years of age; "*youth*" means any person, of either sex, who shall have attained his or her sixteenth birthday but shall not have attained his or her nineteenth birthday; "adult" means a person [sixteen] nineteen years of age or older; "child" or "children" may be held to mean one or more children, "*youth*" or "*youths*" may be held to mean one or more youths, and "parent" or "parents" may be held to mean one or more parents.

§ 2. Section two of such chapter as amended is hereby amended by adding thereto, after subdivision seven, a new subdivision, to be subdivision seven-a, to read as follows:

7-a. "*Youthful offender*" means a youth who is delinquent in that he has violated any law of this state or any duly enacted ordinance of a political subdivision thereof, except where such violation (1) is punishable by death or life imprisonment, or (2) is a

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

violation of any traffic law, traffic ordinance or traffic regulation, which is not a felony or misdemeanor.

§ 3. Section four of such chapter, as amended, is hereby amended by adding thereto, after subdivision seven, a new subdivision, to be subdivision eight, to read as follows:

8. In any county, except in the city of New York, the board of supervisors of the said county, with the concurrent vote of the judge of the children's court of said county, may on or before the first day of August in a given year file a certificate with the secretary of state to the effect that in their opinion the business of the court requires an additional judge and that such additional judge should be elected within the said county and the electors of said county shall at the next general election following the filing of said certificate choose an additional judge of the children's court of such county who shall serve for such term and be paid such salary and whose successor or successors shall be chosen in the same manner and for the same term and be paid the same salary as the law provides for the judge of the children's court of such county.

§ 4. Such chapter is hereby amended by adding thereto a new article, to be article three-a, to read as follows:

ARTICLE III-A

THE YOUTH COURT DIVISION; JURISDICTION; PRELIMINARY PROCEDURE; HEARINGS AND ADJUDICATIONS

Section 30. *Jurisdiction.*

30-a. Petition.

30-b. Issuance of summons and other processes.

30-c. Service of summons.

30-d. Arrests; transfers from other courts.

30-e. Procedure.

30-f. Hearings; how held.

30-g. Custody of youth; release.

30-h. Place of detention.

30-i. Hearings and judgments.

30-j. Criminal proceedings.

30-k. Right of youth to be dealt with as an adult.

Section 30-l. Immunity.

30-m. Adjudication not to serve as a disqualification.

30-n. Mental and physical examination; treatment.

30-o. Modification, setting aside or vacating of judgment.

30-p. Visits to institutions.

30-q. Religion of custodial persons and agencies.

30-r. Separation of facilities.

30-s. Construction.

§ 30. *Jurisdiction.* 1. *There shall be a youth court division of the children's court in each county of the state, except in the city of New York, which court shall have exclusive original jurisdiction within such county to hear and determine all cases or proceedings involving the hearing, trial, parole, probation, remand or commitment of youthful offenders; and the provisions of this article as well as the provisions of subdivision eight of section four and other parts of this act affecting the youth court division of the children's court, or as the same may be amended, shall also apply with full force and effect to the children's courts heretofore established by special act or acts in any counties outside the city of New York to which this act is not made generally applicable, notwithstanding the provisions of sections one and forty-six of this act.*

2. *When jurisdiction shall have been obtained by the court in the case of any youth, such youth shall continue for the purposes of this act under the jurisdiction of the court until he attains his twenty-first birthday unless committed, held to answer a criminal charge in another court or discharged prior thereto.*

3. *The youth court division shall, except as herein otherwise provided, have exclusive original jurisdiction in all cases against persons charged with a failure to obey any order of the court made pursuant to the provisions of this section, and any violation of an order made pursuant to the provisions of this section shall be punishable as a misdemeanor, but the court may, in its discretion, proceed with and adjudicate upon it as a contempt of court.*

4. *The court shall also have power to punish any person guilty of a criminal contempt as prescribed by article nineteen of the judiciary law.*

5. Judges of the children's court sitting in the youth court division shall have all the powers granted to magistrates by the code of criminal procedure.

§ 30-a. *Petition.* Any person may institute a proceeding respecting a youth by filing with the court a verified petition stating such facts as will bring the youth within the jurisdiction of the court. The petition shall include the name and street address of the youth and a prayer to the court for such action or relief as the law provides. The title of the proceedings shall be "Children's Court of the county of, Youth Court Division, In the Matter of, a youth over the age of sixteen years and under the age of nineteen years."

§ 30-b. *Issuance of summons and other processes.* Upon the filing of a petition the judge may, either forthwith or after an investigation which he may direct to be made, cause a summons to be issued, which shall be signed by him or by the clerk of the court, requiring the youth to appear at the court at a time and place named to show cause why such youth should not be dealt with according to law, or in his discretion, the justice may issue a warrant for the arrest of the youth. The court may also issue a subpoena, or in a proper case a warrant or other process, to secure or compel the attendance of any person whose testimony or presence at a hearing or proceeding is deemed by the court to be necessary; and any person who wilfully fails or refuses to obey any process of the court shall be guilty of a contempt of court, and, except as otherwise herein provided, may be punished therefor as prescribed by article nineteen of the judiciary law.

§ 30-c. *Service of summons.* Service of a summons shall be made by delivery of a true copy thereof to the person summoned. In case the summons cannot be served, or the person or persons served fail to obey the same, and in any case where the court believes that a summons might be ineffectual, or that the welfare of a youth requires that such youth shall be brought forthwith into the custody of the court, a warrant may be issued by the court against the youth. All papers, warrants, or other process shall be served by any peace officer of the county in which the court is located, when such officer is directed so to do by the court or a judge thereof.

§ 30-d. *Arrests; transfers from other courts.* 1. Whenever any youth is arrested for any offense specified in subdivision seven-a of section two of this act with or without a warrant, it shall be the duty of the officer having such youth in charge immediately to notify the parent, guardian or other person responsible for its custody or control, or the person with whom such youth is domiciled, that such youth has been taken into custody; and forthwith with all convenient speed the officer shall directly take such youth to the youth court division of the children's court of the county in which the offense, if any, was committed, if the court is in session, and if not in session, then to the rooms, office, shelter or other place of detention designated by the court for the reception of youths and the officer making the arrest shall immediately make and file a petition as hereinbefore provided. Nothing herein contained shall be held to prohibit the acceptance of bail or recognizance as provided in subdivision four of section five hundred and fifty-four of the code of criminal procedure. In the event a petition or complaint shall be filed on a day when the court is not in session, a parent, guardian, attorney or friend of the youth may obtain a copy of such petition and apply for the fixing of bail and have bail fixed for the appearance of said youth at the next session of the youth court division.

2. In no event shall any youth be at any time detained in any room, office, shelter, or other place wherein are also detained at the same time either children or adults.

3. When any person is brought before any magistrate or other court for arraignment, hearing or trial, and it is found that such youth is over the age of sixteen and under the age of nineteen years, such magistrate or court shall immediately by order transfer the case or proceeding to the youth court division of the childrens court of the county, and shall direct that the youth shall forthwith be brought before and delivered to such court, if it be in session, and if it is not in session, then to the rooms, office, shelter or other place of detention designated by the court for the reception of youths.

§ 30-e. *Procedure.* When the method of procedure in a case, action or proceeding to which the court has jurisdiction is not

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prescribed by this act, such procedure shall be the same as provided by law for other courts exercising like jurisdiction, or by the rules adopted by the court and the court shall have such jurisdiction as may be necessary to enable it to carry out and enforce the provisions of this act.

§ 30-f. *Hearings; how held. All cases in which youths are involved, shall be heard separately and apart from the trial or hearing of cases against adults or children. The court shall have power upon the hearing of any case involving any youth, to exclude the general public from the room wherein the said hearing is held, admitting thereto only such persons as may have a direct interest in the case.*

§ 30-g. *Custody of youth; release. If it appears from the petition that the interests of justice require the immediate apprehension of a youth, the judge may endorse or cause to be endorsed upon the summons an order that the officer serving the same shall at once take such youth into custody or he may issue a warrant as provided by law.*

Any youth in custody may be discharged by the court, or pending final action in his case the youth may be released on bail or paroled in the custody of a parent, guardian, probation officer or other person, or remanded to the custody of a duly authorized agency, association, society or institution designated by the court which may direct that such youth shall be brought before the court at a time specified.

§ 30-h. *Place of detention. No youth coming within the provisions of this act shall be placed in or committed to any prison, jail, lockup or other place or shall be transported in any vehicle where such youth can come in contact at any time or in any manner with any adult or child who has been found neglected or delinquent, or been convicted of a crime, or who is under arrest, or who is awaiting action on a petition, complaint or indictment. Unless suitable accommodations for the detention of youths held for hearing or disposition or as material witnesses shall have been provided, the judge may, for the purpose of carrying into effect the provisions of this act, arrange for such youth or youths temporarily to board or lodge in a private home or in the custody of*

some fit person, subject to the supervision of the court; or the court or a judge may, by order, direct any duly authorized association, agency, society or institution maintaining, in accordance with law, a suitable place of detention for youths, to provide temporary care in such place of detention for any youth detained under the jurisdiction of the court or subject to its orders or supervision. The reasonable cost of such maintenance, and the maintenance of youths committed by the court, shall be provided by the county.

§ 30-i. *Hearings and judgments.* Upon the return of a summons or other process, or after any youth has been taken into custody, he shall immediately be taken before the judge, if the court be in session, or if it is not in session, at the next session, for preliminary hearing. If, upon such preliminary hearing, the court shall find that the youth is subject to its jurisdiction, the court shall set a time for a final hearing and shall refer the case to an appropriate officer of the court who shall inquire into the habits, surroundings, conditions and tendencies of the youth so as to enable the court to render such order or judgment as shall best conserve the welfare of the youth and carry out the objects of this act. The court may in its discretion order the fingerprinting and photographing of any youth. The court may from time to time adjourn the hearing and pending final action place the youth in the custody of a parent, guardian, relative or other fit person and, if the court so directs, under the supervision of a probation officer.

The court, having before it a report including the results of such examinations as the court in its discretion may order, and after the district attorney has had an opportunity to recommend to the court whether or not the youth should be prosecuted for the crime or offense which he is alleged to have committed, shall determine whether the youth is a youthful offender within the meaning of subdivision seven-a of section two of this act, and, if it so finds, shall determine whether it will best conserve the welfare of the youth and of society, and best accomplish the objects of this act to relieve the youth from criminal prosecution. If the material facts alleged in the petition are not sustained by

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the preponderance of competent evidence, the petition shall be dismissed and the youth discharged. If the youth is found to be a youthful offender who should be relieved from criminal prosecution, the court shall render judgment in one of the following ways:

a. Place the youth in his own home or in the custody of a relative or other fit person subject, however, to the supervision of a probation officer and to the further orders of the court;

b. Commit the youth to the care and custody of a suitable institution maintained by the state or any subdivision thereof, or to the care and custody of a duly authorized association, agency, society or institution;

c. Require the youth to make restitution from the youth's own earnings, in such manner as the court may determine, to anyone injured by a violation of law for which the court finds the youth to be responsible or, in the alternative, remand, commit or place on probation as herein provided;

d. Suspend judgment;

e. Render such other and further judgment, or make such other order or commitment as the court may be authorized by law to make.

A youth may be placed and continued on probation for such time as the court may deem proper, but such period shall not extend in any case beyond his twenty-first birthday. In any case of a violation of the probationary conditions, the court may impose upon the probationer, at any time prior to his twenty-first birthday and irrespective of his age at the time of such violation, any penalty or penalties which it might have imposed before placing him on probation.

§ 30-j. Criminal proceedings. In the event that the court shall determine that the youth should not be relieved from prosecution, it shall immediately direct that a formal complaint be filed charging the youth with the crime or offense which he is alleged to have committed and shall fix a time for a hearing on such complaint. At such hearing the judge of the court, sitting as a magistrate, shall determine as otherwise provided by law, whether there is sufficient evidence to hold the youth to answer criminal

charges in the appropriate court; or, if the charge be one over which a magistrate has summary jurisdiction, the court shall render final judgment as provided for by law.

If the court finds that there is sufficient evidence, the youth shall be held to answer to the grand jury or court of special sessions as the nature of the court's finding may require, and the court shall by order direct that the record of the proceeding before the judge sitting as a committing magistrate be forwarded to the district attorney and the court may fix the amount of bail to be furnished by or on behalf of the youth or may parole him for his appearance to answer the charges pending against him.

§ 30-k. *Right of youth to be dealt with as an adult. At any time after the filing of a petition and before the court has rendered judgment after final hearing the youth may demand that the charges against him be determined in accordance with the provisions of law as if he were an adult. Whereupon the court shall dismiss the petition and proceed in the same manner as provided for in section thirty-j of this act.*

§ 30-l. *Immunity. Upon the court's determination that a youth is a youthful offender who should be relieved from criminal prosecution such youth shall be immune from any prosecution or penalty, except as provided in this act, for the crime or offense alleged in the petition or which he is adjudged to have committed and discharge from probation shall immunize him from further prosecution or penalty until and unless a new offense is committed.*

§ 30-m. *Adjudication not to serve as a disqualification. No determination made under the provisions of section thirty-i of this act shall operate as a disqualification of any youth subsequently to hold public office or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no youth shall be denominated a criminal by reason of such determination, nor shall such determination be deemed a conviction. Neither the fact that a youth has been before the youth court for hearing nor any confession, admission or statement made by him to the court or to any officer thereof before he shall have attained his nineteenth birthday, shall ever be admissible as evidence against him or his interest in any other court, except where the*

proceedings in the youth court were held in pursuance of sections thirty-j and thirty-k of this act. Nothing in this section contained, however, shall be construed to prevent any court in imposing sentence upon an adult after conviction from receiving and considering the records and information on file in the youth court with reference to such adult when he was a youth, or shall be construed to prevent this court from considering the same upon a subsequent occasion.

§ 30-n. *Mental and physical examination; treatment. The court in its discretion, during or after a hearing, may cause any youth within its jurisdiction to be examined by a physician duly licensed as such by the state of New York or by a psychologist or psychiatrist appointed or designated for the purpose by the court, or during or after a hearing, may remand such youth for physical or psychiatric study or observation for a period not to exceed a total of thirty days. If at any time it shall appear to the court that any youth within its jurisdiction is mentally defective, the court may cause such youth to be examined and if such youth shall be found to be mentally defective, the court may commit such youth. Whenever a youth within the jurisdiction of the court and under the provisions of this act appears to the court to be in need of surgical or medical care, a suitable order may be made for the treatment of such youth in his home, in a hospital or other suitable institution, and the reasonable expenses thereof shall be a charge upon the county.*

§ 30-o. *Modification, setting aside or vacating of judgment. 1. Any order or judgment made by the court of any youth committed by virtue of any proceeding may be vacated or set aside or modified as permitted by law.*

2. In any proceeding affecting a youth, the court may stay execution, set aside or arrest judgment, or grant a new trial or hearing, on any of the grounds authorizing any court of criminal jurisdiction so to do. The court may entertain an application to that effect by a duly authorized agency, association, society or institution, or by any interested person acting on behalf of the youth, or may act on its own motion on giving proper notice to

interested parties or to any agency, association, society or institution having custody of the youth.

3. *The court may at any time during the progress of a proceeding arising under any provision of this article vacate any commitment previously made where it can be shown to the satisfaction of the court that a mistake of fact was made in adjudicating the youth's religion or may on its own motion or on application, after giving reasonable notice to interested parties and to the agency, association, society or institution having custody of the youth, proceed with judgment, consistent with the religion of the youth, as if such erroneous commitment had not been made, or may make such other or further order or commitment as shall to the court seem just.*

§ 30-p. *Visits to institutions.* At least once each year it shall be the duty of the judge to visit and inspect each institution to which a youth shall have been committed by the court during the year and the fiscal authorities of the county shall be authorized and required to approve and pay the necessary traveling expenses incurred by the judge in making such visits.

§ 30-q. *Religion of custodial persons and agencies.* 1. *Whenever a youth is remanded or committed by the court to any duly authorized association, agency, society or institution, other than an institution supported and controlled by the state or a subdivision thereof, such commitment must be made, when practicable, to a duly authorized association, agency, society or institution under the control of persons of the same religious faith or persuasion as that of the youth.*

2. *Whenever any youth thus committed is placed by any such association, agency, society or institution in a family, or in the home, or in the custody, of any person other than that of its natural or adopted parent or parents, or when so placed or paroled directly by the court, such placement or parole must, when practicable, be with or in the custody of a person or persons of the same religious faith or persuasion as that of the youth.*

3. *The provisions of subdivisions one and two of this section shall be interpreted literally, so as to assure that in the care, protection, guardianship, discipline or control of any youth his reli-*

gious faith shall be preserved and protected by the court. But this section shall not be construed so as to prevent the remanding of a youth, during the pendency of a proceeding, to a duly authorized society or place of detention designated by the court, nor to the placing of a youth in a hospital or similar institution for necessary treatment.

4. The words "when practicable" as used in this section shall be interpreted as being without force or effect if there is a proper or suitable person of the same religious faith or persuasion as that of the youth available to be designated as custodian or to whom control may be given; or if there is a duly authorized association, agency, society or institution under the control of persons of the same religious faith or persuasion as that of the youth, at the time available and willing to assume the responsibility for the custody of or control over any such youth.

5. If a youth is placed in the custody, or under the supervision or control, of a person or of persons of a religious faith or persuasion different from that of the youth, or if a youth is remanded or committed to a duly authorized association, agency, society or institution, or to any other place, which is under the control of persons of a religious faith or persuasion different from that of the youth, the court shall state or recite the facts which impel it to make such disposition and such statement shall be made a part of the minutes of the proceeding.

6. Any youth placed or committed under order of the court shall be subject to such visitation, inspection and supervision as any duly authorized state department, board or bureau shall provide for or require.

§ 30-r. Separation of facilities. So far as is practicable, all rooms and facilities used by youths shall be physically separate and apart so as to be inaccessible from other parts of the same building in which any other court or other part of the children's court shall be in session and shall have separate entrances; provided, however, that hearing rooms used by the court other than for the purposes of the youth court division may also be used for the hearing of youths if at the time of such use such rooms, their approaches, waiting rooms and all other facilities used by such

youths are not accessible to children or to adults charged with criminal offenses.

So far as possible a waiting room with a competent person in charge shall be provided for the care of youths brought before the youth court division. Unless directed by the court, youths shall not be permitted in the court room of the youth court division, except where the proceedings are in relation to the youth.

This section shall be construed liberally in so far as practicable with the physical set-up of the court.

§ 30-s. *Construction. This act shall be so constructed that the care, guidance, training, control and discipline of the youths brought before the court shall be in a manner calculated to guard them from association with crime and criminals, to the end that they may be corrected and rehabilitated and the protection of society more surely safeguarded.*

§ 5. Section forty-five of such chapter, as amended by chapter three hundred ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

§ 45. General provisions; court records; construction. In the hearing of any case coming within the provisions of this act the general public shall be excluded and only such persons and the representatives of authorized agencies admitted thereto as have a direct interest in the case. All cases in which children are directly involved or appear shall be heard separately and apart from the trial of cases against adults. A room separate and apart from the regular courtroom shall be provided for the use of the childrens court, together with suitable quarters for the use of the judge, the probation officers and other employees of the court.

The court shall devise and cause to be printed such forms for records and for the various petition, orders, processes and other papers for the use of the court or in the cases or proceedings instituted under or pursuant to provisions of this act as shall be deemed necessary to meet the requirements of the court.

The court shall maintain a full and complete record of all cases brought before it. The county shall provide a separate place for the filing of all papers in a manner similar to filing papers of a

county court. [All such records may be withheld from indiscriminate public inspection in the discretion of the judge, but such records shall be open to inspection by the parent, guardian, next friend or attorney of the child. Any authorized agency to which a child is committed may examine the record of investigation and may in the discretion of the court obtain a copy of the whole or a part of such record.] *The records of any case, including fingerprints and photographs, in the children's court, including the youth court division thereof, shall not be open to inspection, except that the petition, process, formal motions and other papers appropriate to a judgment roll on a case on appeal shall be open to inspection by the parent, guardian, next friend or attorney of the child or youth in the proceeding. However, the court in its discretion, upon the application of an interested party and after proper inquiry, may permit the inspection of any papers or records in any particular case if it is made to appear that the interests of the child or youth may be served thereby; provided, however, that any social agency duly authorized and approved by the court may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or part of such record.*

No adjudication under the provisions of this act shall operate as a disqualification of any child subsequently to hold public office or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no child shall be denominated a criminal by reason of such adjudication, nor shall such adjudication be denominated a conviction. Neither the fact that a child has been before the children's court for hearing, nor any confession, admission or statement made by him to the court or to any officer thereof while he is under the age of sixteen years, shall ever be admissible as evidence against him or his interests in any other court.

All provisions of the penal law or code of criminal procedure or other statutes inconsistent with or repugnant to any of the provisions of this act shall be considered inapplicable to the cases arising under this act. All statutes and laws, not inconsistent

with these provisions, relating to courts exercising general jurisdiction shall apply with full force and effect, except as herein otherwise specifically provided. Chapter four hundred and eighty-nine, laws of nineteen hundred fifteen, is hereby repealed.

The judge of said court shall have the power officially to visit any institution to which a child may be remanded or committed by the children's court of his county.

Any child placed out, boarded out or committed under order of the court shall be subject to the visitation and supervision of the state board of social welfare in accordance with the provisions of the [state charities] *social welfare* law.

This act shall be construed to the end that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that as far as practicable they shall be treated not as criminals but as children in need of aid, encouragement and guidance.

§ 6. This act shall take effect July first, nineteen hundred forty-two.

Analysis of the Youth Court Act for New York State

(BY AMENDMENT OF THE STATE-WIDE CHILDREN'S COURT ACT)

The Youth Court Act for Up-state New York follows in all important particulars the New York City Act on which it has been based. The Youth Court is made a division of the Children's Court in each Up-state County; the age limits, offense jurisdiction, as well as the procedure, parallel the corresponding features of the New York City Act.

Two considerations are worth noting. In the first place, the Act applies to every county of the State outside of New York City—including Onondaga, Monroe, Chautauqua and Ontario, counties which are covered by separate Children's Court Acts as far as the delinquent under sixteen is concerned. Secondly,

DRAFT ACTS FOR A YOUTH COURT

in order to provide for additional judges to hear the cases which will come before the Youth Division of the Children's Court, this Act specifies that each county may elect such additional judges in a manner similar to that permitted by law for the election of children's court judges in Section 4, sub-section 1 of the State-wide Children's Court Act.

In every other important respect, this Act and the New York City Act are identical.

PART FOUR

CHAPTER **IX.** LEGISLATION SUBMITTED,
NOT ENACTED
AND NOT RE-INTRODUCED

Two types of bills submitted to the Legislature as a result of the work of this Committee, have not been enacted into law. One group consists of bills introduced with no hope of passage, but for the sake of the publicity value which their introduction might have. Debate centering around these bills with the Senate or Assembly Chamber as a forum for public discussion, accomplished in some instances, we believe, results which could not have been guaranteed by the passage of the bills themselves. In a succeeding Chapter will be found draft acts previously submitted by the Committee which were not enacted, and which are again proposed. Below will be found bills which it is not intended to re-submit.

I The first of these, Senate No. 390, Assembly No. 658, was introduced in the Senate on January 26, 1939. It was felt by some members of the Committee, that while judges of children's courts had the official power to visit any institution to which children were remanded or committed, that few of them actually availed themselves of this power, or viewed such visits as an important function. The Committee felt that this resulted in a grave injustice to the children so committed. The function of the children's court is protective and not punitive, commitments to institutions are for the purpose of treatment and not of retribution. Yet the majority of children's court judges did not willingly assume the responsibility—which is assumed by physi-

cians for example—that they should have some acquaintance, however slight, with the centers to which they were committing children for treatment.

The children's court judges of the City of New York are required to make at least one annual visit to and inspect each institution to which delinquents are committed, while the State-wide Children's Court Act merely gives the judges of these latter courts the power so to visit. We have set out above a proposal to make the provision of the New York City Children's Court Act applicable to all the Children's Courts of the State in this regard.

Meanwhile, though this bill failed of passage—was, in fact, never voted out of Committee—we still believe its fundamental philosophy to be correct—that judges of courts—children's or criminal—should not expect to make use of treatment and correctional facilities without having had some first hand observation of those facilities. The publicity which the bill received, due to the clamor that went up at its introduction, served, we believe, a worthy purpose, and it is as a reminder of that purpose that it is reprinted here.

An Act TO AMEND THE CHILDREN'S COURT ACT OF THE STATE OF NEW YORK AND THE PENAL LAW, IN RELATION TO OFFICIAL VISITS BY JUDGES

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section forty-five of the children's court act of the state of New York, as last amended by chapter three hundred ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

§ 45. General provisions; court records; construction. In the hearing of any case coming within the provisions of this act the

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

general public shall be excluded and only such persons and the representatives of authorized agencies admitted thereto as have a direct interest in the case. All cases in which children are directly involved or appear shall be heard separately and apart from the trial of cases against adults. A room separate and apart from the regular courtroom shall be provided for the use of the children's court, together with suitable quarters for the use of the judge, the probation officers and other employees of the court.

The court shall devise and cause to be printed such forms for records and for the various petitions, orders, processes and other papers for the use of the court or in the cases or proceedings instituted under or pursuant to provisions of this act as shall be deemed necessary to meet the requirements of the court.

The court shall maintain a full and complete record of all cases brought before it. The county shall provide a separate place for the filing of all papers in a manner similar to filing papers of a county court. All such records may be withheld from indiscriminate public inspection in the discretion of the judge, but such records shall be open to inspection by the parent, guardian, next friend or attorney of the child. Any authorized agency to which a child is committed may examine the record of investigation and may in the discretion of the court obtain a copy of the whole or a part of such record.

No adjudication under the provisions of this act shall operate as a disqualification of any child subsequently to hold public office or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no child shall be denominated a criminal by reason of such adjudication, nor shall such adjudication be denominated a conviction. Neither the fact that a child has been before the children's court for hearing, nor any confession, admission or statement made by him to the court or to any officer thereof while he is under the age of sixteen years, shall ever be admissible as evidence against him or his interests in any other court.

All provisions of the penal law or code of criminal procedure or other statutes inconsistent with or repugnant to any of the provisions of this act shall be considered inapplicable to the cases

arising under this act. All statutes and laws, not inconsistent with these provisions, relating to courts exercising general jurisdiction shall apply with full force and effect, except as herein otherwise specifically provided. Chapter four hundred and eighty-nine, laws of nineteen hundred and fifteen, is hereby repealed.

The judge of said court shall [have the power] officially [to] visit any institution to which a child may be remanded or committed by the children's court of his county.

Any child placed out, boarded out or committed under order of the court shall be subject to the visitation and supervision of the state board of social welfare in accordance with the provisions of the state charities law.

This act shall be construed to the end that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that as far as practicable they shall be treated not as criminals but as children in need of aid, encouragement and guidance.

§ 2. The penal law is hereby amended by inserting therein a new section, to be section twenty-one hundred ninety-nine, to read as follows:

§ 2199. *Judges liable to forfeiture of office. If any judge of any children's court fails to officially visit any institution to which a child has been remanded or committed by him within one year thereof, such failure involves as a consequence a forfeiture of his office; and disqualifies him from ever afterwards holding such office in this state.*

§ 3. This act shall take effect September first, nineteen hundred and thirty-nine.

2 Senate No. 2372 of 1940, introduced on March 18, 1940, was submitted to appraise public reaction to the proposal to increase the upper age limit of children's court jurisdiction from the sixteenth birthday to the eighteenth. From the reactions reaching Senators and Assemblymen, a large majority of the people of New York State opposed the age increase pro-

posed by this measure. The bill never came within any prospect of passage. Its demise led the Committee to request a further extension of time in order to arrive at a measure which would at the same time adequately meet the problem of the older adolescent offender, and secure a larger measure of public support.

An Act TO AMEND THE CHILDREN'S COURT ACT, IN RELATION TO THE DEFINITION OF JURISDICTIONAL AGE LIMITS OF CERTAIN PERSONS

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section two of chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," as amended by chapter three hundred and ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

1. When used in this act unless otherwise expressly stated or unless the context or subject matter requires a different interpretation "court" without modification means the children's court; "judge" means the judge of the children's court established by this act; "child" means a person less than [sixteen] *eighteen* years of age; "adult" means a person [sixteen] *eighteen* years of age or older; "child" or "children" may be held to mean one or more children, and "parent" or "parents" may be held to mean one or more parents.

§ 2. This act shall take effect immediately.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

3 Senate Bill No. 2073 of 1941 was not reported out of Committee because of the controversy it aroused as to whether the purposes which it aimed to accomplish were not already attained under the present law. Under the section which this bill would have added to the Code of Criminal Procedure, judges were given the power in criminal cases to parole defendants under the age of nineteen, without bail.

The Committee has given this matter further attention since the close of the last legislative session. It is our conclusion that there is now no necessity for its enactment, since the bill establishing courts for youthful offenders throughout the State cares adequately, in our opinion, for the problems of remand, detention and release on bail and parole of the offender between the ages of sixteen and nineteen to whom the following bill referred.

An Act TO AMEND THE CODE OF CRIMINAL
PROCEDURE, IN RELATION TO PAROLE OF DEFENDANTS
UNDER NINETEEN YEARS OF AGE WITHOUT BOND

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. The code of criminal procedure is hereby amended by inserting therein, after section five hundred and fifty-seven, a new section, to be section five hundred and fifty-four-d, to read as follows:

§ 554-d. *In any case of a felony, misdemeanor or offense where a magistrate or a judge or a justice has the power to fix and accept bail he may, in his discretion, parole the defendant without bond if the defendant is less than nineteen years old.*

§ 2. This act shall take effect September first, nineteen hundred forty-one.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

4 The following bill, Senate No. 2075 of 1941 was vetoed by the Governor after its passage by both Houses, on the grounds that it conflicted with Chapter 940 of the Laws of 1941 (Senate No. 2108 of 1941) which continued the Adolescent's Court in the Counties of Kings and Queens, New York City, until July 1, 1942. This measure would allow criminal courts to follow the procedure inaugurated and followed by the Adolescent's Courts of these two counties. With the bills proposed by this Committee to allow the establishment of youth courts throughout the State, this bill is no longer appropriate.

An Act TO AMEND THE CODE OF CRIMINAL PROCEDURE, IN RELATION TO ADJUDGING CERTAIN PERSONS CHARGED WITH CRIMES AS WAYWARD MINORS

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The code of criminal procedure is hereby amended by adding thereto a new section, to be section two hundred and fifty-two-a, to read as follows:

§ 252-a. *Recommendation by grand jury and district attorney for determination of certain infants as wayward minors. In any case where a grand jury has found an indictment or where the court has approved the filing of an information by the district attorney by direction of the grand jury, pursuant to section seven hundred and forty-two of the code of criminal procedure, where it shall appear that the defendant is between the ages of sixteen and nineteen years and has not theretofore been convicted of a crime, the grand jury and the district attorney may recommend to the court for which the grand jury was drawn that the defendant, if he consents, be examined to determine whether he may be adjudged a wayward minor pursuant to title seven-a of the*

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

code of criminal procedure. If the defendant consent to such examination and the court approve the recommendation, the indictment or information shall not be filed, and no further action shall be taken in connection with such indictment or information against the defendant. Examination and investigation is then to be made of the defendant and his conduct, as the court may direct, and if a complaint is then filed pursuant to title seven-a of the code of criminal procedure, and after a hearing, and the court should adjudge such defendant to be a wayward minor, then the indictment or information shall be dismissed and no record or entry of such indictment or information shall be made. If the court do not approve such recommendation of the grand jury and the district attorney, or should not adjudge the defendant to be a wayward minor, then the indictment or information shall be deemed filed as of the day the grand jury voted the indictment or directed the filing of the information, regardless of whether or not that grand jury had been discharged or be still in session.

§ 2. This act shall take effect immediately.

5 On March 17, 1941 there were introduced in the Senate by the Chairman of this Committee, two bills, Senate No. 2074 and Senate No. 2076, which, though differing slightly in their terminology, sought to achieve the same purpose. That purpose was to legalize and allow throughout the criminal courts of the State a procedure which had been followed in the Adolescent's Courts of Kings and Queens Counties, New York City since 1935, namely, to dismiss a criminal complaint, in the case of certain defendants between the ages of sixteen and eighteen, inclusive, and to substitute, with the written consent of the District Attorney, a charge of wayward minor.

Both of these bills remained in legislative committees during the session, in order that this Committee might make a further study of the problem and introduce to the Legislature in 1942, other bills based on that examination. The two bills reprinted below are submitted therefore simply as part of the legislative history of this Committee.

An Act TO AMEND THE CODE OF CRIMINAL
PROCEDURE, IN RELATION TO DISPOSITION OF CASES IN-
VOLVING MINORS UNDER NINETEEN YEARS OF AGE UPON
EXAMINATION BEFORE MAGISTRATE

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Section two hundred and eight of the code of criminal procedure is amended to read as follows:

§ 208. When and how to be committed. If, however, it appear from the examination that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner, indorse on the depositions and statement, an order, signed by him, to the following effect: "It appearing to me by the within depositions (and statement, if any, that the crime therein mentioned [] (or and other crime according to the fact, stating generally the nature thereof []) has been committed, and that there is sufficient cause to believe the within named guilty thereof, I order that he be held to answer the same." *In any case in which the defendant is less than nineteen years old, the magistrate may, with the written consent of the district attorney, instead of making such order, dismiss the complaint and on the same facts adjudge the defendant a wayward minor.*

§ 2. This act shall take effect September first, nineteen hundred forty-one.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

An Act TO AMEND THE CODE OF CRIMINAL
PROCEDURE, IN RELATION TO DISPOSITION OF CASES IN-
VOLVING MINORS UNDER NINETEEN YEARS OF AGE UPON
EXAMINATION BEFORE MAGISTRATE

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Section two hundred and eight of the code of criminal procedure is amended to read as follows:

§ 208. When and how to be committed. If, however, it appear from the examination that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must, in like manner, indorse on the depositions and statement, an order, signed by him, to the following effect: "It appearing to me by the within depositions (and statement, if any) that the crime therein mentioned [] (or any other crime according to the fact, stating generally the nature thereof []) has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof, I order that he be held to answer the same []", *unless the defendant is between the ages of sixteen and nineteen years, in which event the magistrate, except a justice of the peace, may with the written consent of the district attorney adjudge the defendant a wayward minor.*

§ 2. This act shall take effect September first, nineteen hundred forty-one.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

CHAPTER **X.** LEGISLATIVE ENACTMENTS
SUBMITTED BY
THE COMMITTEE

The Committee feels that no review of its work would be complete without a summary of the positive results of its legislative efforts to date. In the succeeding Chapter will be found draft acts previously submitted by the Committee, on the basis of its deliberations during the past years, which did not become law and which it is the Committee's intention to re-introduce during the 1942 Legislative Session. In this Chapter will be found bills introduced by members of this Committee in both Senate and Assembly which were enacted and which are now part of the laws of New York State.

I Senate Bill No. 1835, which is now Chapter 546 of the Laws of 1941 amended the Inferior Criminal Courts Act of New York City (now the Criminal Courts Act) to allow sentence to be imposed on defendants by magistrates presiding in the Probation Court.

The judges of the Magistrate's Courts sit in a variety of courts. When a magistrate tries a case and finds the defendant guilty, he may remand him or admit him to bail pending investigation. That defendant must be sentenced in the court in which the investigation is ordered.

The Probation Court, part of the Magistrate's Court, sat only once a month prior to this amendment and had the power to dismiss the cases of persons whose probation period was com-

pleted, as well as the authority to modify probation terms or to revoke a term of probation because of the violation of probation conditions, and to commit to an institution. Under the power which this amendment grants to magistrates sitting in the Probation Court, this court can also sentence offenders who have not been granted probation.

An Act TO AMEND THE INFERIOR CRIMINAL COURTS ACT OF THE CITY OF NEW YORK, IN RELATION TO REMAND PENDING INVESTIGATIONS

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and fifty-three of chapter six hundred and fifty-nine of the laws of nineteen hundred ten, entitled "An act in relation to the inferior courts of criminal jurisdiction in the city of New York, defining their powers and jurisdiction and providing for their officers," as last amended by chapter five hundred and ninety-six of the laws of nineteen hundred thirty-three, and thus renumbered by chapter seven hundred and forty-six of the laws of nineteen hundred thirty-three, is hereby amended to read as follows:

§ 153. Remand pending investigation. After a conviction or a plea of guilty, any magistrate sitting as such or as a court of special sessions may remand the defendant or admit him to bail for a period not to exceed five days for investigation before pronouncing sentence. In case of the death or disability of any such magistrate, or because of the fact that he is not then sitting in the court in which the defendant is to be sentenced, or upon his request endorsed on the papers, sentence may be imposed by any magistrate presiding in the same court, *or by the magistrate presiding in the probation court.*

§ 2. This act shall take effect immediately.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

2 Senate Bill No. 2108, which is now Chapter 940 of the Laws of 1941 was introduced, admittedly, as a temporary and stop-gap legislative measure to continue the existence of the Adolescent's Courts of Kings and Queens Counties in New York City. The magistrates of these Courts had stated many times—publicly—that they were not sure that they had any legislative sanction for the steps they were taking in dismissing the criminal information or complaint and substituting for it a wayward minor charge. To be sure, this reduction of the complaint was done only with the consent of the complainant, the defendant and his counsel, and the district attorney, but these judges feared that an appeal might be taken from an order of this court which, if sustained, might wipe out their Courts and thus harm irreparably the cause of socialized work in the criminal courts. Such a blow might have delayed for years the legislative recognition of their efforts which this bill granted them only through the end of June, 1942.

Had the Committee been able to formulate in 1941 the conclusions which they have arrived at by 1942, this bill might not have been necessary. At its expiration, and with the passage of the bills proposed in Chapter 8, it is hoped that all the children of New York State will be receiving the specialized treatment which this bill contemplated when it sanctioned the commendable and experimental, though perhaps extra-legal, procedure which the Magistrates Courts were exercising in the Counties of Kings and Queens for the protection of adolescent offenders aged sixteen to eighteen, inclusive.

An Act TO CONTINUE THE EXISTENCE OF THE
ADOLESCENT COURTS IN THE COUNTIES OF KINGS AND
QUEENS, AND TO FACILITATE THE DISPOSAL OF CASES IN-
VOLVING MINORS UNDER NINETEEN YEARS OF AGE IN THE
COUNTIES OF KINGS AND QUEENS

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. The special city magistrates' courts presently known as the adolescent courts which have been held and are now being held in the counties of Kings and Queens provided for by the board of city magistrates in accordance with the authority vested in said board by section one hundred of the inferior criminal courts act of the city of New York, shall continue to operate with full force and effect until July first, nineteen hundred forty-two.

§ 2. This court may, with the consent of the district attorney, dismiss the criminal information or complaint against a defendant who shall have been over the age of sixteen years but shall not have reached his nineteenth birthday when the act or offense is alleged to have been committed and deal with him in accordance with the procedure specified in title seven-a of the code of criminal procedure.

§ 3. Nothing in this act shall be deemed to invalidate any prior procedure or judgment of these courts.

§ 4. This act shall take effect immediately.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

3 Senate Bill No. 239, Assembly No. 312, was passed as the Moran bill and is now Chapter 828 of the Laws of 1940.

The purpose of the bill was to discourage appeals from the final order or judgment of the children's court. By awarding the costs of appeal against the adverse party, it was expected that parents or guardians of children whose cases were heard in the children's court might hesitate before entering an appeal to a higher court.

The question of whether or not appeals from an adjudication or conviction by the children's court should be allowed, is highly debatable.

Ideally speaking, juvenile courts should be of superior jurisdiction, with appeals allowed only on a question of law or upon the grounds of abuse of discretion. Such appeals should only be allowed, as they are in New York State, from a final order or judgment. The purpose of the juvenile court process is for the "aid, encouragement, and guidance" of children. To this end their treatment is entrusted to a tribunal which represents the State as *parens patriae*. There is no authority in such Courts to visit punishment or vengeance upon the child, as upon one who has violated the criminal law, but rather an interest in the protection of the future of the minor by his proper treatment. A hearing in the juvenile court is not a trial for an offense, but an ascertainment of the existence of grounds for further action by the court. Failure to provide for appeals in the children's court is no denial of any liberty nor violation of any constitutional right.

Meanwhile, appeals are allowed from the final order or judgment of the children's courts of this State, and while the number of such appeals is not large, the following bill, now law, will, it is hoped, reduce that number still further.

An Act TO AMEND THE CHILDREN'S COURT
ACT OF THE STATE OF NEW YORK, IN RELATION TO COSTS
OF APPEAL

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Chapter five hundred forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," is hereby amended by adding a new section, to be section forty-three-a, to read as follows:

§ 43-a. *Costs of appeal. Costs of appeal, including disbursements not chargeable to the county, shall be awarded to the prevailing party and against the adverse party in the same manner and to the same extent as if the proceeding had been an action commenced in the county court. The court shall determine the amount of such costs and disbursement after not less than five days written notice to the adverse party and shall render judgment therefor. A transcript of such judgment may be issued by the court and entered in the office of the clerk of the county in which the judgment was rendered at any time within six years after its rendition. The county clerk on the presentation of the transcript and payment of the fees therefor must indorse thereon the date of its receipt, file it in his office and docket the judgment as of that date, in a book kept by him for that purpose, in the same manner as a judgment in the county court, and enter therein the particulars of the judgment as stated in the transcript. From the time of filing such transcript the judgment is deemed the judgment of the county court of that county, and must be enforced accordingly, except that an execution can be issued thereon only by the county clerk after payment of the lawful fees therefor.*

§ 2. This act shall take effect immediately.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

4 The following bill, now Chapter 334 of the Laws of 1941, was originally introduced in 1940 as Senate Bill No. 174, Assembly No. 217, and again in 1941 as Senate Bill No. 412, Assembly No. 145. The Children's Court Act of 1922 omitted to give to judges of the children's courts, and their clerks, the power to administer oaths and to take acknowledgments. This was clearly an oversight, as even a justice of the peace has the authority to administer an oath, an error which this bill corrects.

An Act TO AMEND THE CHILDREN'S COURT ACT, IN RELATION TO THE ADMINISTRATION OF OATHS

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," is hereby amended by adding thereto a new section, to be section seven, to read as follows:

§ 7. *Administration of oaths. In each county the judge of the children's court, the acting judge of the children's court, the chief clerk and deputy clerks of the children's court shall have the power to administer oaths and take acknowledgments.*

§ 2. This act shall take effect immediately.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

5 The following Act, passed as the "Lawrence Bill", now Chapter 366 of the Laws of 1941, was introduced in the Senate as Bill No. 538, and in the Assembly as No. 710. This bill added a further subdivision to Section 147 of the Code of Criminal Procedure, which made the judges of the children's courts magistrates, a status which they were not considered to have prior to the enactment of this law.

By Chapter 436 of the Laws of 1924, every children's court judge (except in the county of Hamilton) is required to be a member of the bar as a prerequisite to his holding office, and therefore he is to be deemed competent to discharge this additional responsibility. By empowering children's court judges to become committing magistrates, they would be further empowered to follow the treatment of children who may have come before them in the children's court, after they reach the age of sixteen. Under this sub-division, also, judges of the children's courts are now enabled to apply the Wayward Minor Law in the cases of children who are above the age of sixteen. (See chapter 7, pp. 124-127).

An Act TO AMEND THE CODE OF CRIMINAL PROCEDURE, IN RELATION TO MAGISTRATES

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and forty-seven of the code of criminal procedure is hereby amended by adding thereto a new subdivision, to be subdivision ten, to read as follows:

10. *The judges of the various children's courts of the state of New York.*

§ 2. This act shall take effect immediately.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

6 Senate Bill No. 2341 of 1940, is now Chapter 671 of the Laws of 1940. This bill, known as "An Act to Amend the Domestic Relations Court of the City of New York, generally" makes the following specific provisions:

1. Relating to the payment of money paid into the Family Court for the support of wives, children or poor relatives;

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2. a. Relating to the contribution by parents or guardians to the expense incurred by the remand or commitment of a child to a public or private institution;
b. Permitting the Department of Welfare to proceed against a parent or guardian in the Family Court for maintenance of a child who has been remanded or committed to a private or public institution;
3. Permitting the return to the children's court of a neglected child, who, after placement becomes incorrigible or commits an act of delinquency;
4. Allowing the children's court, after ordering the discharge of a child from an institution, to place him on probation to the children's court, or otherwise to place him under the court's supervision;
5. Allowing the children's court, upon an application for the transfer of a child from one institution to another, similarly to place him on probation to the children's court, or otherwise place him under the court's supervision;
6. Allowing the Family Court, to alter, vacate, cancel, or reduce sums ordered paid for support;
7. Relating to the residence of a husband or father required to furnish support;
8. Relating to the inclusion of children under the age of seventeen in a petition for support in cases where an action for divorce, separation or annulment is pending.

These provisions were the result of the operation of the Domestic Relations Court of New York City during the first six years of its experience. Their incorporation into law has materially aided in a clarification of the law under which the court operates.

An Act TO AMEND THE DOMESTIC RELATIONS
COURT ACT OF THE CITY OF NEW YORK, GENERALLY

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Section twenty-nine of chapter four hundred and eighty-two of the laws of nineteen hundred thirty-three, entitled "An act to establish in and for the city of New York a court of domestic relations, to be known as the domestic relations court of the city of New York, and defining its powers, jurisdiction and procedure and providing for its organization," is hereby amended to read as follows:

§ 29. Support bureau. 1. There shall be in each part of the family court a bureau for the receipt and disbursement of funds paid for the support of wives, children or poor relatives. Each such bureau shall be known as the support bureau and shall be under the direction of an employee who shall be known as chief of such bureau. Each day at the close of the day he shall deposit in a bank approved by the board all funds then on hand. He shall keep a careful and accurate record of all moneys received and paid out in accordance with the rules of the board. He shall cause to be given or sent to each person making payments to such bureau a receipt upon a printed form to be signed in the name of the court with his name and that of the employee issuing it signed thereto, with a statement of the amount of money received and from whom and on whose behalf. Each such receipt shall carry a serial number, which shall also appear upon a carbon copy on an identical form, on which the information filled in on the original shall appear. He shall cause to be promptly transmitted to the probation officer in charge of each case information with regard to all payments made relative thereto and shall report specifically to such officer all instances where required payments have not

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

been made within a two weeks' period. No such carbon copy shall for any reason be destroyed. It shall be the duty of the administrative officer in each such part of the family court at least once a month to carefully examine and check over these carbon copies and the records of all money received and paid out in said part. He shall report thereon in writing to the director of administration and shall always include a statement of beneficiaries for whom money has been paid to the bureau, but which has not been received and receipted for by such beneficiaries after the lapse of two weeks' time.

2. *Any and all moneys paid into the support bureau of a family court division of the domestic relations court of the city of New York for the support of a wife, child or poor relative shall upon payment into such support bureau be deemed for all purposes to be the property of the wife, child or poor relative for whom such money is to be paid; except that where a petition is signed and a proceeding is instituted to obtain support for a child, a poor relative or person other than the petitioner, all money or moneys paid pursuant to order entered in such proceeding may be collected by the petitioner in such proceeding who shall be accountable to the person for whose benefit the proceeding is brought for the proper use of such moneys.*

§ 2. Such chapter is hereby amended by inserting therein a new section, to be section fifty-six-a, to read as follows:

§ 56-a. *Duties of city department of welfare with respect to compelling support.* 1. *Upon the remand or commitment of a child to a public or private institution other than a shelter maintained and conducted by a society for the prevention of cruelty to children, the department of welfare of the city of New York shall investigate the ability of the parent of the child, or other person legally chargeable, to contribute in whole or in part to the expense incurred by the city of New York on account of the maintenance of such child.*

2. *If in the opinion of the department of welfare such parent or legal custodian is able to contribute in whole or in part the department of welfare shall thereupon institute a proceeding in its own name in the family court division of the domestic relations*

court of the city of New York to compel such parent or other person legally chargeable to contribute such portion of such expense on account of the maintenance of such child as shall be proper and just and the domestic relations court of the city of New York is vested with jurisdiction in the premises.

§ 3. Subdivision one of section sixty-one of such chapter is hereby amended to read as follows:

1. Children. The children's court in each county shall have exclusive original jurisdiction within such county to hear and determine all cases or proceedings involving the hearing, trial, parole, probation, remand or commitment of children actually or apparently under the age of sixteen years, or who were under the age of sixteen years when the act or offense is alleged to have been committed, or the right of action in such case or proceeding accrued, who are, or who are alleged to be (a) delinquent, (b) physically handicapped, (c) material witnesses, (d) mental defectives, (e) neglected, and shall also have jurisdiction to appoint guardians of the person *and guardians ad litem* of such children, and to grant orders for the adoption of such children. Such court shall also have jurisdiction in proceedings to determine the question of the rightful custody of such children if their custody is subject to controversy and such custody or controversy relates to their immediate care.

§ 4. Existing subdivision three of section sixty-one of such chapter is hereby repealed.

§ 5. Section sixty-one of such chapter is hereby amended by inserting therein a new subdivision, to be subdivision three, to read as follows:

3. *Where a child is committed as a neglected child by the domestic relations court of the city of New York or by the department of welfare of the city of New York, and while so committed becomes incorrigible or commits an act of delinquency outside of the city of New York, such child may be returned to the children's court in New York city in the county thereof where the original commitment was made by said court, but if said commitment was made by the department of welfare of the city of New York then such child shall be returned to the county thereof in which the*

parents of said child last resided or where its legal custodian last resided or had its principal office, and in such case a petition alleging such incorrigibility or delinquency may be drawn and on eight days notice to its parents or custodian a hearing on said petition may be had and suitable disposition made thereof by such court, irrespective of whether or not such incorrigibility or delinquency occurred within the city of New York.

§ 6. Subdivision one of section eighty-six of such chapter, as amended by chapter three hundred and sixty-two of the laws of nineteen hundred thirty-four, is hereby amended to read as follows:

1. Any order or judgment made by the court in the case of any child committed by virtue of any proceeding may be vacated and set aside or modified, as provided by law. Any parent or guardian, or a duly authorized agency, association, society or institution, or the next friend of any child who has been or shall hereafter be committed by the children's court to the custody of an institution, corporation, board, association, society, agency or person, may at any time file with the court a petition verified by affidavit setting forth under what conditions such child is living, and that an application for the release of the child has been made to and denied by such institution, corporation, association, society, agency or person, or that such institution, corporation, association, society, agency or person has failed to act upon such application within a reasonable time. A copy of such petition shall at once be served upon such institution, corporation, association, society, agency or person, or upon the commissioner of public welfare, or such other officer, board or department having the custody of the child, whose duty it shall be to file an answer to the same within five days. If upon examination of the petition and answer the court is of the opinion that a hearing should be had, it may, upon reasonable and due notice to all concerned, proceed to hear the facts and determine the question at issue, and may discharge, return such child to the custody of its parents or guardian or direct such institution, corporation, association, society, agency or person to make such other arrangements for the child's care and welfare as the facts of the case may require.

If the court orders the discharge of a child from an institution, upon an application duly made, the court may place the child on probation or under the supervision of the court. But no such petition affecting a juvenile delinquent shall be entertained by the court within sixty days after the date of his commitment.

§ 7. Section eighty-six of such chapter is hereby amended by adding thereto a new subdivision, to be subdivision four, to read as follows:

4. Upon any application for transfer of a child from one institution to another, the court shall have power to discharge the child or to place the child on probation or under the supervision of the court.

§ 8. Subdivision ten of section ninety-two of such chapter is hereby amended to read as follows:

(10) To determine the manner in which sums ordered paid for support shall be paid and applied; *to alter or vacate any such determination, and to cancel or reduce arrears of sums so ordered paid.*

§ 9. Section one hundred and three of such chapter, as amended by chapter three hundred and sixty-two of the laws of nineteen hundred thirty-four, is hereby amended to read as follows:

§ 103. Residential jurisdiction. A husband or father may be required to furnish support or may be found guilty of non-support, as provided in the two preceding sections, if, at the time of the filing of the petition for support,

(a) he is residing or domiciled in the city; or

(b) he is not residing or domiciled in the city but is found therein at [such] the time, provided that the petitioner is so residing or domiciled at [such] the time of the filing of the petition for support and is so residing or domiciled at the time of the service of such summons or warrant; or

(c) he is neither residing nor domiciled nor found in the city but prior to [such] the time of the filing of the petition for support and, while so residing or domiciled, he shall have failed to furnish such support or shall have abandoned his wife or child

and thereafter shall have failed to furnish such support, provided that the petitioner is so residing or domiciled at such time.

§ 10. Section one hundred thirty-seven of such chapter, as amended by chapter three hundred and forty-six of the laws of nineteen hundred thirty-six, is hereby amended to read as follows:

§ 137. Divorces; separations; annulments, et cetera. Where a divorce, separation or annulment has been granted to the petitioner by the supreme court or a suit for such relief is pending, and the respondent has been required under the terms of any order or decree entered in such separation, divorce or annulment proceeding to pay a specified sum to the petitioner or her children as alimony or maintenance and has failed to do so, that fact shall not be a bar to a proceeding in the family court to compel support within the limits of the order of the supreme court and as set forth by section ninety-two of this act, provided that the respondent is not in jail for failure to obey the order of the supreme court. An action for divorce, separation or annulment pending in the supreme court shall not prevent the family court from entertaining a petition for support if it is shown to the satisfaction of the family court that the petitioner is likely to become a public charge; *nor shall such an action prevent the family court from entertaining a petition for support of a child or children up to the age of seventeen years, in the absence of an order of the supreme court in such action providing for such support.* After final adjudication by the supreme court denying alimony in a separation action, if in the opinion of the family court the circumstances of the parties have changed or if it is shown to the satisfaction of the family court that the petitioner is likely to become a public charge, the family court may entertain a petition for support. An agreement to separate shall in no way preclude the filing of a petition for the support of a child or the making of an order for its support by the family court, or for the support of a wife who is likely to become a public charge.

§ 11. This act shall take effect immediately.

7 Following the passage of the preceding bill (Sen. No. 2341), an Act which would further amend the Domestic Relations Court of New York City was introduced as Senate No. 1429, which was twice amended—as Senate No. 1660 and finally as Senate No. 1859. Upon its enactment, it became Chapter 943 of the Laws of 1941.

Specifically the bill:

1. Requires that probation officers assigned to supervision be of the same religious faith as the probationer, if there are children in the probationer's family or custody;
2. Places certain limitations upon the inspection of records of the Children's and Family Court;
3. Broadens the conditions under which, and the places where, mental, physical and psychiatric examinations of persons seeking custody of a child may be ordered by the court;
4. Changes the term "sentence" to "judgment", after a child has been adjudicated as delinquent or neglected;
5. Removes the former limitation of a five year period of supervision or probation by the court in the case of neglected and delinquent children, respectively;
6. Removes the requirement that a child violate the conditions of his probation or supervision before he may be committed;
7. Allows the court to remand a child to the New York City Department of Hospitals for physical, or psychiatric examination during or after a hearing, but not before;
8. Exempts a Justice of the Family Court of New York City from liability in any proceedings under the Act, unless it is shown that he acted maliciously, or deliberately abused his discretion; and
9. Includes step-children, grandchildren, parents and grandparents with wives and children as persons whom the respondent (husband or father) shall be presumed to have sufficient means to support.

The provisions of this law, like those of the preceding law, arose from the day-to-day business of the Court of Domestic Relations. They were both introduced at the request of the justices of that Court.

An Act TO AMEND THE DOMESTIC RELATIONS COURT ACT OF THE CITY OF NEW YORK, GENERALLY

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty-two of chapter four hundred and eighty-two of the laws of nineteen hundred thirty-three, entitled "An act to establish in and for the city of New York a court of domestic relations, to be known as the domestic relations court of the city of New York, and defining its powers, jurisdiction and procedure and providing for its organization," as last amended by chapter two hundred and eighty-three of the laws of nineteen hundred thirty-nine, is hereby amended to read as follows:

§ 32. Probation bureau; section of supervision. There shall be in each part of the family court in the probation bureau a section of supervision. It shall be the duty of each such section to supervise persons placed on probation by the court and to see that the conditions of probation are carried out by the probationer, and to aid by counsel and advice, and in other ways, in maintaining the families under their care as social units, and to bring about harmonious relations in the home. *The probation officer assigned to such duty, whenever practicable, shall be of the same religious faith of the family or person under supervision whenever there are children in such family or in the custody of such person.* Each such section shall be under the direction of a probation officer who shall be designated chief of the section of supervision, and who shall be subject to the supervision and control of the chief of the probation bureau of that part of the court. There shall

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

be assigned to each such section as many probation officers and other employees as may be necessary for its proper functioning. Proper forms for reporting on probationers in harmony with the best current practice shall be prepared by the chief probation officer and used by each such bureau. Such forms shall show the constructive case work planned, attempted and accomplished and give a chronological history of the work of supervision.

§ 2. Section fifty-two of such chapter, as last amended by chapter three hundred and forty-six of the laws of nineteen hundred thirty-six, is hereby amended to read as follows:

§ 52. Privacy of records. The records of any case, in either a children's court or the family court [may be withheld from indiscriminate public inspection by order of the court, but such records] *shall not be open to inspection except that the petition, process formal motions and other papers appropriate to a judgment roll on a case on appeal shall be opened to inspection by the parent, guardian, next friend or attorney of the child in a proceeding in the children's court and to the petitioner and respondent or their respective attorneys in a proceeding in the family court. However, the court in its discretion in any case may permit the inspection of any papers or records.* Any duly authorized agency, association, society or institution to which a child is committed may cause an inspection of the record of investigation to be had and may in the discretion of the court obtain a copy of the whole or a part of such record.

§ 3. Subdivision one of section sixty-one of such chapter, as last amended by chapter six hundred and seventy-one of the laws of nineteen hundred forty, is hereby amended to read as follows:

1. Children. The children's court in each county shall have exclusive original jurisdiction within such county to hear and determine all cases or proceedings involving the hearing, trial, parole, probation, remand or commitment of children actually or apparently under the age of sixteen years, or who were under the age of sixteen years when the act or offense is alleged to have been committed, or the right of action in such case or proceeding accrued, who are, or who are alleged to be (a) delinquent, (b) physically handicapped, (c) material witnesses, (d) mental

defectives, (e) neglected, and shall also have jurisdiction to appoint guardians of the person and guardians ad litem of such children, and to grant orders for the adoption of such children. Such court shall also have jurisdiction in proceedings to determine the question of the rightful custody of such children if their custody is subject to controversy and such custody or controversy relates to their immediate care. *When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue for the purposes of this act under the jurisdiction of the court until he becomes twenty-one years of age unless discharged prior thereto.*

§ 4. Subdivision seven of section sixty-one of such chapter, as added by chapter four hundred and ninety-two of the laws of nineteen hundred thirty-nine, is hereby amended to read as follows:

7. In the exercise of its jurisdiction the court shall have power to order, either before, during or after a hearing a mental, physical or psychiatric examination of or [to commit, for purposes of observation, to the division of psychiatry of the department of hospitals of the city] *to commit for purposes of observation, in the manner provided by law for a magistrate, a parent, guardian, custodian or other person having or seeking custody of a child [where such person is before the court and the court has reason to believe that such person may be insane. Where such examination or commitment is ordered either before or after a hearing, it shall only be after reasonable notice to the person to be examined or committed].*

§ 5. Section eighty-three of such chapter as amended by chapter seven hundred and twenty-six of the laws of nineteen hundred thirty-seven, is hereby amended to read as follows:

§ 83. Hearing; judgment. Upon the return of the summons or other process or after any child has been taken into custody, and at the time set for the hearing, the court shall proceed to hear and determine the case. The court from time to time may adjourn the hearing and inquire into the habits, surroundings, conditions and tendencies of the child so as to enable the court to render such order or judgment as shall best conserve the wel-

fare of the child and carry out the objects of this act. During such adjournments the child may be placed in the custody of a parent, guardian, relative or other fit person and under the supervision of a probation officer, if the court so directs. At any stage of a proceeding the justice may, in his discretion, appoint any suitable person to be the guardian ad litem of the child for the purposes of the proceeding.

The court, if satisfied by competent evidence, may adjudicate the child to be delinquent or neglected, and in such case shall render judgment as follows:

- (a) Suspend **[sentence]** *judgment*;
- (b) Place the child, if delinquent, on probation or, if neglected, under supervision to remain in his own home or in the custody of a relative or other fit person, subject, however, to the supervision of a probation officer and to further orders of the court;
- (c) Commit the child to the care and custody of a suitable institution maintained by the state or any subdivision thereof, or to the care and custody of a duly authorized association, agency, society or institution;
- (d) Impose a fine in a sum not to exceed five hundred dollars, or in the alternative to remand, commit or place on probation as herein provided;
- (e) Continue the proceeding and place the child in its own home or in the custody of a relative or other suitable person, or a duly authorized association, agency, society or institution, for a certain designated period subject to the orders of the court;
- (f) Discharge the child, if a neglected child, to the custody of such officer, board or department as may be authorized to receive children as public charges, who shall provide for such child as in the case of a destitute child or as otherwise authorized by law; or
- (g) Render such other and further judgment or make such other order or commitment as the court may be authorized by law to make.
- (h) Where a child is alleged in the petition to be a neglected child and the parent, guardian or other person responsible for the custody or control of such child cannot, after diligent search,

be found or brought to court, after proof of neglect the court shall proceed with respect to the welfare of such child as though such parent, guardian or other person were present. If thereafter the parent, guardian or other person responsible for the custody or control of such child shall, on affidavit showing such relationship or responsibility, move the court that the disposition made by the court in such case be vacated and ask for a rehearing, the court shall grant such motion.

A child may be placed and continued on probation *if delinquent or under supervision if neglected* for such time as the court or justice may deem proper, [but such period shall not be longer than five years, nor shall it] *but such period shall not* continue in any case beyond the twenty-first birthday of any child. Such probationary period, *or period of supervision*, however, may extend beyond the time [such] a child attains the age of sixteen years. In case of a violation *of probation or of the terms of supervision* [of the probationary condition] the court may *render any other judgment* [impose on the probationer any penalty or penalties] which it might have *rendered* [imposed] before placing *the probationer* [him] on probation *or child under supervision* [,]; and in any case where the court shall have adjudged a child to be delinquent, or neglected, and shall have placed him on probation [subject to the] *or under supervision* [of a probation officer] *as the case may be*, the court [in the manner aforesaid] *on revocation of such probation or supervision for violation of the conditions or terms thereof* may commit such child [for violation of the conditions of his probation at any time during such probationary period] irrespective of his age at the time of such violation.

§ 6. Section eighty-five of such chapter, as amended by chapter three hundred and forty-six of the laws of nineteen hundred thirty-six, is hereby amended to read as follows:

§ 85. Mental and physical examinations; treatment. The court in its discretion, [either before,] during or after a hearing, may cause any child within its jurisdiction to be examined by a physician duly licensed as such by the state of New York or by a psychologist or psychiatrist, *or during or after a hearing may remand such child for physical or psychiatric study or*

observation to the department of hospitals of the city of New York for a period not to exceed a total of thirty days. [appointed or designated for the purpose by the court. If it shall appear to the court that any child within its jurisdiction is mentally defective, the court may cause such child to be examined and if such child shall be found to be mentally defective, the court may commit such child to a suitable institution. In the case of a physically handicapped or other child within its jurisdiction after satisfactory proof of the need thereof the court may make an order for his (a) maintenance, (b) surgical, (c) medical or therapeutic treatment, (d) hospital care, (e) appliances and devices, (f) home teaching, (g) transportation, (h) education, (i) tuition, or (j) scholarships. Whenever a child within the jurisdiction of the court and under the provisions of this act appears to the court to be in need of medical or surgical care a suitable order may be made for the treatment of such child in its home, in a hospital or other suitable institution, and the reasonable expenses thereof shall be a charge upon the city of New York; but the court may, after a proper hearing, issue an order that the person or persons charged with the liability under the law to support such child, shall pay a part or all the expenses of such treatment in the manner provided elsewhere in this act for the support or partial support of children committed by the court.]

§ 7. Paragraph nine of section ninety-two of such chapter, is hereby amended to read as follows:

(9) To require the support by those legally chargeable therewith of a dependent adult who is unable to maintain himself and is likely to become a public charge[; evidence that he is without means shall be presumptive proof of his liability to become a charge upon the public and the respondent shall be deemed to be of sufficient financial ability to contribute to his support unless the contrary shall affirmatively appear to the satisfaction of the court or a justice thereof]; the court to determine and apportion the amount that each such relative shall be required to contribute, as may be just and appropriate in view of the circumstances of the case.

§ 8. Section one hundred and twenty-three of such chapter is

hereby amended by adding thereto a new paragraph, to be paragraph (g), to read as follows:

(g) *A justice of this court who in good faith issues process in any proceedings under this act shall not be liable therefor unless it is shown that his action in so doing was malicious or a deliberate abuse of his discretion.*

§ 9. Section one hundred and thirty-one of such chapter is hereby amended to read as follows:

§ 131. Right to counsel; presumptions. At the commencement of a hearing under the provisions of sections one hundred and twenty-eight and one hundred and twenty-nine, or of a trial under the provisions of section one hundred and thirty, the court shall inform the respondent of his right to the aid of counsel at every stage of the proceeding and before any further proceedings are had; and in the case of a trial shall also inform him of the charge against him. In any such hearing or trial wives and husbands shall be competent witnesses against each other; a [husband or father] *respondent* shall, *prima facie*, be presumed to have sufficient means to support his wife [and children;], *child, step-child, grandchild, parent, grandparent, and* a dependent adult without means to maintain himself shall be presumed to be likely to become a public charge.

§ 10. This act shall take effect immediately.

CHAPTER **XI.** LEGISLATION

PREVIOUSLY SUBMITTED

AND HERE RE-INTRODUCED

I The following draft act was first introduced in the Senate as No. 173, later amended as No. 1550. The identical act was introduced as Assembly No. 218. No action was taken on this bill in 1940. It was introduced a second time in 1941 as Senate No. 411, Assembly No. 613, when it passed the Senate, but was stricken from the Assembly Calendar with the understanding that more study would be given to it during the year.

The Committee has devoted a great deal of consideration to this bill since the close of the last session, and again submits it for passage by the Legislature. Enactment of this bill would secure the result earnestly advocated by numerous witnesses before us: namely, that some serious efforts be made to take hold of the pre-delinquent child before his anti-social tendencies have become so fixed as to make almost inevitable the development of a criminal career in later youth and adulthood. No more studies are needed to prove that the delinquent child brought before the children's court has frequently committed earlier offenses for which he was not apprehended.

Some objection has been made to an extension of the jurisdiction of the children's court beyond the dealing with duly adjudicated delinquents on the grounds that to do so would be an intrusion into the home. The opposition advances the further argument that the place for correction is in the home, that efforts should first be made to improve the parental care of children. We agree heartily with this position; we also urge that not only must

the home, as well as the school and the social agency be encouraged to recognize and treat incipient cases of maladjustment, but further that the deficiencies and the neglect of these agencies should somehow be offset. We believe this to be the duty of that tribunal which the Legislature has set up for the care and protection of childhood—the Children's Court.

It has been argued that this bill gives to the children's courts a jurisdiction neither found nor contemplated in that part of our State Constitution which refers to the children's courts. But Article VI, Section 18, gives to these courts jurisdiction not only for the correction and guardianship of children, but for their protection as well.

Furthermore, the preamble to the Children's Court Act of 1922 states that the nature of the court's attitude toward the children brought before it should ". . . approximate as nearly as possible that which they should receive from their parents . . .". A parent would not wait until his child's conduct had become so critical that a formal procedure was necessary—he would be expected to deal promptly with a serious maladjustment long before it had become acute. The children's courts of this State could only the more conscientiously carry out the responsibilities with which the Children's Court Act charges them by dealing informally with pre-delinquent conduct before it has become serious enough to merit the official attention of the court.

Those who speak of the duplication of work which would result from passage of this Act seem unaware of the fact that it does not contemplate the creation of any new machinery, even within the Court itself. No additional treatment facilities of any kind are established: the Court is simply empowered to take cognizance of the cases of children who reveal symptoms of developing delinquent conduct. These symptoms are well recognized by all who deal with children. It will be noted, further, that the Act does not empower the children's court to initiate informal proceedings but only to stand ready to *receive* certain facts about a child when these facts are presented by an interested person. The Court's role in these informal proceedings is based on its active interest in children who are in danger of becoming delinquent.

A decision handed down in 1932 has confirmed the non-criminal nature of the children's court procedure: strict rules of criminal procedure are inapplicable to proceedings in the children's court, since juvenile delinquency is not a crime. (*People v. Pikunas*, 260 N. Y. 72, 182 N. E. 675). There is, therefore, no question of the possibility of permitting the children's court to use the admissions of a child as a basis for bringing him within the jurisdiction of the Court. Children before the children's court neither "admit" nor "confess".

It is entirely likely that the provisions of this bill may never be used in certain counties of the State which are generously provided with child welfare services. It is a platitude that facilities for children are not evenly distributed throughout our State, but tend to concentrate themselves chiefly in the large urban centers. It is entirely likely that these places may have sufficient agencies to observe and treat incipient cases of maladjustment. But in the less populous centers the children's court may not have the help of a wide variety of child-caring services, and it is entirely fitting and proper that the Court should be vested with the powers to prevent delinquency which this bill contemplates. To cite but one of many possible parallels, the State Education Law with its provisions for grants to schools in the less populous and less prosperous parts of the State, helps to correct that imbalance which operates to the disfavor of the rural child.

The Children's Court Law for New York City was recently amended to permit certain neglected children who become incorrigible or who commit delinquent acts to be brought again into the Children's Court for "suitable disposition". (Laws of 1940, Chapter 672). We see no reason why children who exhibit delinquent tendencies, but who have not been adjudged neglected, may not have their need and condition brought to the attention of an agency, like the Children's Court, which deals in a chancery fashion and by means of a non-punitive procedure. It would seem that the law now discriminates against the child who, while he may not be neglected, does manifest certain tendencies which, if allowed to go uncorrected, are more than likely to develop into serious delinquent conduct.

Recommendations regarding crime prevention have been placed before the Committee by several score of witnesses representing the widest possible diversity of experience and opinion from private and public institutions and agencies in all parts of the State. These witnesses deplored—with us—the fact that delinquent careers spring from all kinds of detrimental and unwholesome factors, that furthermore, despite the best efforts of parents, teachers and social workers, all too many children engage in pre-delinquent conduct which must await apprehension and formal complaint, before the machinery of the Children's Court may move to correct it. Yet in every county of the State, the Legislature has set up tribunals for non-criminal dealing with youthful misconduct. These same children's courts, it seems to us, are the answer to the challenge of juvenile delinquency and we are convinced that these courts should be empowered to take cognizance of the *condition* of pre-delinquency, a condition only slightly less serious than that represented by an apprehended act. The children's courts now require the commission of no overt, proven act to empower them to take jurisdiction in the case of children who are neglected, abandoned, destitute, physically handicapped or mentally defective—either on the part of the child or of an adult. The Court extends its protective care to children in these situations because their need and condition commend them to the attention of society.

There is no difference whatsoever between the manner in which the children's court would be apprised of the fact that a child required its "informal" attention, under the terms of this bill, and the procedure which now brings other children to the "formal" attention of the Court. Section 10 of the Children's Court Act of 1922 specifies that "the parent or custodian of any child, an authorized agency, or any interested person having knowledge or information that a child is abandoned, neglected or delinquent or otherwise within the jurisdiction of the Court may institute a proceeding . . .". This is almost the precise working of the new Section 10-a proposed by the following bill.

Nothing in this proposed draft act pretends to interfere in any way with a complainant's right to a hearing on a matter which

he refers to the children's court for its informal attention. Such interference would be contrary not only to the complainant's rights in such matters, but also to the public welfare generally. The bill clearly implies that the complainant's consent to an informal hearing will first be had before the court proceeds farther in the matter. The fact that "parents, custodians, authorized agencies, school officials, police officers or other interested persons" are given the choice of presenting knowledge or information regarding a child to the court in an unofficial manner means that they must be persuaded of the superior value of this procedure, else they will enter a formal complaint in the regular, approved manner, as they may now do.

Children's courts no longer require children brought before them to be put under oath or to plead to guilt. These steps in Court procedure have long since been abandoned because their narrow and unreasoning requirements are inconsistent with the ascertainment of the facts in regard to a child, for whom *treatment* and not punishment may be ordered by the court. Throughout the hearings held by this Committee, it has been argued by witnesses before us that one of the chief reasons for a special handling of the adolescent offender is to avoid a criminal court appearance or record. Children's courts in this State have abandoned the name of "Juvenile Court" because this title has come to have a certain stigma of its own. One way of dissolving the feeling in the community that appearance in a juvenile court is tantamount to an appearance in a criminal court is through allowing the children's court to handle, informally, the cases of children "exhibiting conduct disorders or troublesome propensities" likely to develop into delinquent conduct.

Despite the many vestiges of the criminal court procedure from which it is not yet completely free, the children's court continues to develop more and more into a community agency; it places increasing reliance upon private and public social agencies of a non-court nature, and in other ways shows a definite trend toward a socialized and non-legalistic approach. The disappearance of the children's court as an authoritarian institution cannot be expected for some time yet, although it is not altogether unlikely

that at some future date it may be supplanted by such a completely non-court agency as the Neighborhood Child Welfare Councils found in Scandinavia. Meanwhile much remains to be done to extend the protective procedure of the children's court as it is now constituted.

Informal dealing on the part of the children's court has been well accepted in practice, even where it has not received precise legislative sanction, simply because such dealing is entirely consistent with the philosophy of the juvenile court and its place as a station for the care of childhood. As one instance, we cite the experience of the Children's Court Division of the Domestic Relations Court of New York City which in 1938 handled 5,867 cases through its Bureau of Adjustment, as against 4,996 cases formally dealt with as delinquents. In other words, almost one-half (46.0 per cent) of the children's cases heard by the largest court for children in the State, were dealt with informally.

"Informal dealing" with adolescents at the other end of the court process—after acquittal or discharge by a criminal court—is now being done on a purely voluntary basis by at least one County in the State. (See Chapter 7, pp. 152-155).

In two recent years, the Children's Court of Westchester County heard the following number of cases by formal and informal methods:

	1937	1938
Juveniles (formal)	962	840
" (informal)	458	388

In 1937, of 795 delinquency cases, 458 (57.6 per cent) were treated informally. Of these, only 20 (4.4 per cent) were subsequently referred for formal treatment, indicating a very high rate of success. In 1938 the same comparison shows 659 cases of delinquency, of which 388 (58.9 per cent) were treated informally, and of these only 11 (2.8 per cent) were thereafter referred for formal court action.

The passage of this bill would bring the law into conformity with present procedure in the Children's Courts of the State. It has received the repeated endorsement of the New York State

Association of Children's Court Judges. We believe it would go far to relieve overcrowding in some of our children's courts, thus freeing them for more intensive work with older and more difficult children.

The Committee submits this bill again for passage by the Legislature with the assurance that it is the most important single piece of legislation which we could devise for the purpose of preventing the development of maladjusted children into delinquent juveniles. The Legislature cannot pass laws which will make the home, the school or the private social agency assume a greater degree of responsibility toward pre-delinquent children. The Legislature can—and should—give to the courts for children in this State the power to prevent delinquency and crime through a measure of attention to the child who has not yet been apprehended in a violation of the law. Some of our children's courts now handle from 50 to 60 per cent of their children's cases in this informal and enlightened fashion. We believe that all the children of the State should be granted the same opportunity regardless of where they live.

An Act TO AMEND THE CHILDREN'S COURT ACT OF THE STATE OF NEW YORK, IN RELATION TO IN- FORMAL HEARINGS BY THE CHILDREN'S COURT

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Section ten of chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, powers and duties, and regulating procedure therein," as amended by chapter three hundred and ninety-three of the laws of nineteen hundred thirty, is hereby renumbered section ten-a, and said chap-

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

ter is hereby amended by inserting therein a new section ten, to read as follows:

§ 10. *Informal hearings. The parent or custodian of any child, authorized agency, school official, police officer or other interested person having knowledge or information that a child is within the jurisdiction of the court as defined in this act, may present or report the alleged facts to the court in an informal manner.*

The court may thereupon notify the parent, guardian or custodian of the child to appear before the court and an informal inquiry concerning the facts may be held. If, upon such informal hearing, the child and his parent, guardian or custodian shall admit a state of facts sufficient to bring the child within the jurisdiction of the court, and shall consent that the child be allowed under the supervision of an authorized agency to remain in his own home, the court may so order.

If such child shall fail to make a satisfactory adjustment under such informal treatment, he may be brought before the court in the more formal manner prescribed in the following sections of this act, based upon any state of facts which bring him within the jurisdiction of the court.

The intent and purpose of this section shall be to encourage the treatment of children exhibiting conduct disorders or troublesome propensities in an informal manner, unless removal from home or the custody of parents or guardians is indicated.

§ 2. This act shall take effect immediately.

2 The following bill was first introduced in 1940 as Senate No. 738, Assembly No. 1132. No action followed. Upon its re-introduction in 1941 it became known as Senate No. 409, Assembly No. 611. The bill passed the Senate and went to the Rules Committee of the Assembly, where, after much debate it was stricken from the Calendar with the understanding that more study should be given it during the year.

The bill is re-submitted here to serve the original purpose contemplated when it was introduced two years ago: to set up in the

Children's Court Act the existing provisions of the Code of Criminal Procedure with relation to the conditions of probation for both children and adults. Our reason for introducing this bill was—and is—to give the Court greater powers of control over the "adult responsible for or who contributes to the delinquency of or neglects any child". The Juvenile Court Standards, first formulated in 1921, clearly specify that "In cases involving adults . . . the usual court procedure in criminal cases is necessary . . .".

It is entirely possible—as has been done—to question the value or importance of any one of the twelve conditions of probation set out in the following bill. This does not eliminate the importance of the entire bill as a further instrument to enable the children's courts to deal adequately with those adults who may be found to be properly responsible for the delinquency or neglect of children brought before them.

Representatives of educational, social and religious agencies appeared before us at the public hearings held by this Committee and deplored the parental and other adult neglect of children and the contribution of these adults to the development of juvenile delinquency. The Legislature cannot legislate against parents as a class. Nor can the Courts enjoin parents and other adults from such initial contribution. But when a complaint has been filed with the Court, that a child is neglected or delinquent, and it is discovered that an adult is primarily responsible, the Court should be empowered to take against such adult the steps which are necessary, in the Court's opinion, to prevent further contribution.

As but one example of the manner in which the Court's hand will be strengthened in dealing with juvenile delinquents, should this bill pass, we cite the problem of "junking", which is very prevalent among children and adolescents. Through the regulation of pawn shops, the State now has some control over one source of revenue from this offense. Yet it is well known that young people steal large quantities of pipe and other materials from unoccupied houses, vacant lots and other premises, which materials they dispose of through second-hand dealers. Such dealers could, of course, be prosecuted for criminally receiving

stolen goods. The problem is how to discover the fact of their receiving. The children's court is in a position to learn such facts through the children who appear before it, and immediately to arraign the adult whose *contribution* serves to encourage the continuance of such breaking, entering and larceny.

Many witnesses who have appeared before us have emphasized the fact that youths are often encouraged to commit offenses by older persons who not only use them as accomplices but also relieve them of the difficult problem of disposing of their loot. While the children's court may not arraign these adults on a complaint of being accessories, the Court may hold them for contributing to the delinquency of the child. The Committee has learned of several instances where the children's court has broken up juvenile rings of shoplifters, burglars, etc. through prosecution of the adults responsible for the leadership and encouragement of these offenses. We frequently hear mention of economic factors as a cause of crime. Usually what is meant is that the concomitants of poverty—poor housing, low wages, lack of recreational facilities, ill health—conduce toward delinquency. There is another side of the economic factor in crime causation: the profit which is returned to adults through the offenses committed by minors. By giving the Court greater control of these adults, this economic factor may be greatly reduced. The New York City Court of Domestic Relations has conducted a noteworthy experiment along these lines.

A recent decision—1940—has established once and for all that an adult who contributes to the delinquency of a child by acting in concert with him in the receipt and disposition of goods stolen by him and by buying such goods from him, is held punishable by the children's court under Section 6, Subdivision 4 of the Children's Court Act of 1922. (*People v. Dritz*, 259 A. D. 210, 18 N. Y. S. (2d) 455.)

It is not enough to take the child into the protection of a Court where "the care, custody and discipline of the children . . . shall approximate as nearly as possible that *which they should receive from their parents*" (*italics ours*) without having some means of controlling that parental neglect, of holding parents and other

adults to a standard of care for children which will prevent the recurrence of that neglect or delinquency which first brought the child to the Court's attention. Where parents and other adults who are now subject to the Court's jurisdiction do not conform to the conditions which the court may set down in accordance with the terms of the following bill, the court may still transfer the probationer's case to the jurisdiction of another court.

Those who in the past may have objected to this bill might do well to keep in mind, finally, that these conditions of probation are not limited by the bill to adults only: the children's court can only become more effective in its work with children, also, by reason of having the conditions of probation clearly specified, as they are below.

An Act TO AMEND THE CHILDREN'S COURT ACT OF THE STATE OF NEW YORK, IN RELATION TO PROBATION

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," is hereby amended by adding thereto a new section, to be section twenty-nine, to read as follows:

§ 29. *Probation. The court shall determine the conditions of probation and may include among them the following:*

The probationer (a) shall avoid injurious or harmful habits; (b) shall avoid places or persons of disreputable or harmful character; (c) shall report to the probation officer as directed by the court or the probation officer; (d) shall permit the probation officer to visit him at his place of abode or elsewhere; (e) shall answer all reasonable inquiries on the part of the probation officer; (f)

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

shall work faithfully at suitable employment; (g) shall remain within a specified place; (h) shall abstain from the use of intoxicating beverages; (i) shall make reparation or restitution to the aggrieved parties in an amount not to exceed the actual damage or loss caused by his offense; (j) shall, if a child of compulsory school age, attend school; (k) shall notify his probation officer of any change of address; (l) shall submit to any medical care or measures for the correction of physical defects reasonably necessary.

The court may at any time revise, modify or enlarge the conditions of probation as to any probationer and may transfer his case to another court in the same or in another jurisdiction as the court may determine. In the order placing the child on probation it shall not be necessary to specify the period of probation, which shall continue until terminated by an order of the court. The period of probation may not in the case of a child extend beyond his minority.

§ 2. This act shall take effect immediately.

3 The following bill has twice before been submitted to the Legislature: in 1940 as Senate No. 443, amended as Senate No. 933, Assembly No. 424; in 1941 as Senate No. 540, Assembly No. 683. In this latter year, the bill passed the Senate but did not pass the Assembly.

This bill, in effect, creates a limited family court within the children's court, giving the present children's court additional jurisdiction in non-support actions affecting a child, step-child, a wife and a minor poor relative.

Essentially there is little difference between the provisions of this Act and the provisions of the Family Court section of the Domestic Relations Act of New York City, specifically Sections 91 through 159, under which this Court has rendered excellent service to the families of New York City, at the same time winning a national reputation by so doing.

Should this bill be enacted, the children's courts of the State (except those in New York City and in those counties which have special Children's Court Acts) will have greatly increased

jurisdiction over situations affecting children. It is not contemplated at this time that family courts should be set up in each county in the State, with a children's court division and a family court division, as prevails in New York City. This Committee agrees with the many witnesses who have appeared before it to testify to the advisability of having the same Court treat both family and children's problems. The Children's Court and the Family Court of New York City were separate until Chapter 482 of the Laws of 1933 brought them together as two closely integrated divisions of a single court.

At the present time, there are—outside of New York City—only six counties with separate children's courts. In forty-eight counties of the State, county court judges serve as judges of the children's courts. With the passage of the following bill, these children's courts should accumulate sufficient experience in dealing with family problems so as to justify the Legislature at a later date, perhaps, in establishing family courts in every county. Courts in some counties of the State do not have sufficient business at the present time to require the full-time services of even one judge.

By giving these courts much of the jurisdiction and powers now enjoyed by the Domestic Relations Court of New York City, the additional work might merit the establishment of county domestic relations courts, with one judge to handle all the business relating to children's and family problems, and thus assure to all the people of the State the same high level of expert care as is now enjoyed by the residents of New York City.

In order adequately to discharge the additional responsibilities granted under this bill, it will be necessary for the children's courts to increase their probation staffs, to enlarge their facilities and to cooperate even more closely with public and private social agencies of all kinds. The Committee does not regard these considerations as handicapping these Courts at the present time.

The measure is almost completely comparable with the Family Court Act of New York City. It has received the repeated endorsement of the New York State Association of Judges of Children's Courts.

Some objection has been made to the bill on the grounds that it does not go far enough—that it would be better to wait until the Legislature could enact a state-wide measure establishing courts similar to the Domestic Relations Court of New York City. We believe that our reasons given above regarding the necessity for the children's courts first to accumulate sufficient experience with the working of this measure adequately answers that argument.

Opposition to this bill has also come from some who feel that it goes too far, that they fear the increased powers which it would place in the hands of the existing children's courts. Fears expressed regarding possible abuse of discretion by children's court judges vested with increased jurisdiction in non-support matters are in fact groundless, when it is realized that these same objections were raised at the time the Domestic Relations Court Act was passed for New York City, and that the dire results predicted at that time, almost ten years ago, have not yet come to pass.

This Committee is of the earnest opinion, based upon three years of deliberations regarding this bill, that its passage will be of immeasurable advantage to the families and the children of the entire State; that it will encourage the handling of family problems as integers and not as fractions, that it will emphasize the fact that children's difficulties are inseparable from the families in which those difficulties arise, that it will place in the hands of the children's court judges of this State a most important and effective instrument for the protection of childhood.

An Act TO AMEND THE CHILDREN'S COURT
ACT OF THE STATE OF NEW YORK, IN RELATION TO SUP-
PORT PROCEEDINGS

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," is hereby amended by adding thereto a new article, to be article three-a, to read as follows:

ARTICLE III-A

SUPPORT PROCEEDINGS

Section 30. Jurisdiction.

30-a. Powers.

31. Legal liability for support.

31-a. Punishment for failure to support.

31-b. Residential jurisdiction.

31-c. Petition.

31-d. Form of petition.

32. Court action; summons.

32-a. Warrants.

32-b. Form of warrant.

32-c. Service of summons and other process.

33. Trial.

33-a. Procedure at trials; rules.

33-b. Right to counsel.

33-c. Presumptions.

33-d. Failure to obey order for support.

33-e. Writ of seizure.

33-f. Suspension of sentence; probation.

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

- 33-g. Revocation of suspension of sentence or probation.
- 33-h. Bond.
- 33-i. Divorces; separations; annulments.
- 33-j. The county not a necessary party.
- 33-k. Bonds for support; bail for appearance; forfeiture; payment.
- 33-l. Procedure when court is not in session.
- 33-m. Erroneous arraignment before a magistrate.
- 33-n. Respondents in jail.
- 33-o. Acceptance of undertaking by magistrates.
- 34. Undertaking for support.
- 34-a. Undertaking to be filed.
- 34-b. Substitution of surety.
- 34-c. Default.
- 34-d. Procedure as to defaults.
- 34-e. Forfeiture applied to support of petitioner.
- 34-f. Surrender of respondent by surety.
- 34-g. Termination of surety's liability.
- 34-h. When new security required.

§ 30. Jurisdiction. In addition to the powers prescribed by section six of this chapter, the children's court shall have: 1. Jurisdiction within the county to hear and determine all proceedings to compel the support of a child, step-child; wife, if pregnant, or if the support of her minor child or step-child is involved; or minor poor relative; and

2. In support proceedings properly brought before the court

a. Jurisdiction for the protection, guardianship and disposition of neglected or dependent minors; and

b. Jurisdiction and powers conferred by law upon magistrates, police justices and justices of a court of special sessions, so far as may be necessary to carry out the provisions of this article; and

3. Jurisdiction within the county in all cases or proceedings against persons charged with failure to obey an order of the court made pursuant to authority conferred by law.

§ 30-a. Powers. In the exercise of its jurisdiction the court shall have power: 1. To order support of a wife and child irrespective of whether either is likely to become a public charge, as

justice requires having due regard to the circumstances of the respective parties.

2. To include in the requirements of an order for support the providing of necessary shelter, food, clothing, care, medical attention, education, expenses of confinement, funeral expenses, and other proper and reasonable expenses.

3. To require of persons legally chargeable with the support of a wife and child or minor poor relative, and who are possessed of sufficient means or who are able to earn such means, the payment weekly, or at other fixed periods, of a fair and reasonable sum for such support, or as a contribution thereto, according to the means of the person so chargeable.

4. To make all orders for support run until further orders of the court, except that an order for the support of a child shall not run beyond the minority of such child.

5. To order support of a step-child by persons legally chargeable therewith, subject to the limitations of subdivision five of section thirty-one.

6. In cases where a child or step-child is involved to make an "order of protection," in assistance or as a condition of an order for support, setting forth conditions of behavior to be observed for a specified time which shall be binding upon husbands or wives, or both, as circumstances may require, and which must be reasonable.

Such orders may require either spouse to:

(a) stay away from the home or from the other spouse or children;

(b) permit the other to visit the children at stated periods;

(c) abstain from offensive conduct against the other or against the children;

(d) give proper attention to the care of the home;

(e) refrain from acts of commission or omission that tend to make the home not a proper place for the other spouse or the children.

7. To award the custody of the children, during the term of such order of protection, to either spouse, or to an appropriate relative within the second degree. But nothing in this act con-

tained shall vest in the court the power to place out or board out any child or to commit a child to an institution or agency, except as herein otherwise provided in the children's court act. In making orders of protection the court shall so act as to insure that in the care, protection, discipline and guardianship of the child his religious faith shall be preserved and protected.

8. To determine the manner in which sums ordered paid for support shall be paid and applied.

9. To require a person ordered to support another to give security by written undertaking that he will pay the sums ordered by the court for such support, and when appropriate to discharge any such undertaking.

10. In lieu of requiring an undertaking, to suspend sentence or place on probation a person who has failed to support another as required by law, and to determine the conditions of such suspension of sentence or probation and require them to be observed; to revoke such suspension of sentence or probation, where circumstances warrant it, and to discharge a respondent.

11. To commit to jail for a term not to exceed six months a person who fails to obey the lawful orders of the court. Such commitment shall not prevent the court from subsequently committing such respondent for failure to thereafter comply with such orders.

12. To hear and determine charges for non-support under the provisions of this article.

13. To release on probation or otherwise prior to the expiration of the full term, a person committed to jail for failure to obey an order of the court or upon conviction for non-support, where the court is satisfied that the best interests of the family and the community will be served thereby.

14. To modify or vacate any order issued by the court.

15. To remand for not more than five days for purposes of investigation, to admit to bail, and to parole on his own recognizance or in custody of counsel, a person charged with non-support.

16. To order either before, during, or after a hearing, a mental, physical and psychiatric examination of the petitioner or respondent.

17. To commit for purposes of observation, in the manner provided by law for a magistrate, a person before the court who the court has reason to believe may be insane.

18. To hold court as a magistrate to hear and determine charges of disorderly conduct by either the petitioner or the respondent affecting the other, or the child of either, where the family is already before the court in a non-support proceeding.

19. To exclude the public from the court-room in a proper case.

20. To punish any person guilty of a contempt of the court in accordance with the provisions of the judiciary law relating to civil and criminal contempt.

21. To send process or other mandates in any matter in which it has jurisdiction into any county of the state for service or execution in like manner and with the same force and effect as similar process or mandates of county courts as provided by the civil practice act.

22. To compel the attendance of witnesses.

23. To make any order necessary to carry out and enforce the provisions of this act.

§ 31. Legal liability for support. 1. A husband is hereby declared to be chargeable with the support of his wife and children and, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his means, as may be determined by the court.

2. Where the father of a child is dead or is incapable of supporting his child or can not be found within the state, the mother of such child is hereby declared to be chargeable with its support and if possessed of sufficient means or able to earn such means, may be required to pay for its support a fair and reasonable sum according to her means, as may be determined by the court.

3. Where the father of a child included in a petition for support is dead, or where the court, in its judgment, is unable to secure adequate support for said child from its parents, and the child's grandparents are of sufficient means to support it, said grandparents are hereby declared to be chargeable with the support of such grandchild and may be required to pay a fair and

reasonable sum according to their means, as may be determined by the court.

4. The parents or grandparents of a dependent minor, who has been a resident of the county at any time during the twelve months preceding the filing of the petition for his support, and who is unable to maintain himself and is likely to become a public charge are hereby declared to be severally chargeable with the support of such minor poor relative. The court shall determine and apportion the amount that each such person shall be required to contribute, as may be just and appropriate in view of the circumstances of the case and their respective means.

5. The step-parent of a child is hereby declared legally chargeable with the support of a step-child likely to become a public charge provided it is shown to the satisfaction of the court that such step-parent had knowledge of the child's existence at the time of said step-parent's marriage.

§ 31-a. Punishment for failure to support. A person chargeable with the support of another as provided in section thirty-one, who fails to provide such support, is guilty of non-support and may be punished by imprisonment in jail for not exceeding six months.

§ 31-b. Residential jurisdiction. A husband or father may be required to furnish support or may be found guilty of non-support as provided in the two preceding sections if, at the time of the filing of the petition for support, (a) he is residing or domiciled in the county; or

(b) he is not residing or domiciled in the county, but is found therein at such time, provided that the petitioner is so residing or domiciled at such time; or

(c) he is neither residing nor domiciled nor found in the county, but prior to such time, and while so residing or domiciled, he shall have failed to furnish such support or shall have abandoned his wife and child and thereafter shall have failed to furnish such support, provided that the petitioner is so residing or domiciled at such time.

§ 31-c. Petition. Notwithstanding the provisions of any other law, a wife, child or minor poor relative may file with the court a

verified petition that the court order the persons legally chargeable with their support to furnish such support as required by law. Such petition may be made on information and belief and may be filed on behalf of such wife, child or minor poor relative by the parent or guardian of the child, or other person in loco parentis, or by any public official having a duty or responsibility relative thereto, or by the representative of an incorporated charitable or philanthropic society having a legitimate interest therein. It shall not be necessary as a condition precedent to the filing of such a petition for the petitioner to make a demand upon the respondent for support.

§ 31-d. Form of petition. The petition shall be entitled "In the matter of, respondent," and shall be in such form as may be prescribed by the court. The person for whom support is asked shall be known as the petitioner and the person alleged to be legally chargeable with such support shall be known as the respondent. The terms "complainant" and "defendant" shall not be used.

§ 32. Court action; summons. The court after receiving the petition shall, in a proper case, cause a summons to be issued, which shall be signed by the court or by the clerk or deputy clerk of the court, requiring the respondent to appear at the court at a time and place named to show cause why the order for support prayed for by the petition shall not be made. Summons shall be in such form as may be prescribed by the court. A summons shall not be refused without giving the petitioner an opportunity to be heard by and present witnesses to the court.

§ 32-a. Warrants. When a petition is presented to the court and it shall appear (a) that the summons cannot be served; or
 (b) that the respondent has failed to obey the summons; or
 (c) that the respondent is likely to leave the jurisdiction; or
 (d) that in the opinion of the court a summons would be ineffectual; or

(e) that the safety of the petitioner is endangered; or
 (f) that a respondent on bail or on parole has failed to appear; the court may issue a warrant, in the form prescribed in the next section, directing that the respondent be arrested and brought

before the court. Warrants and other process may be served by any peace officer. The court shall make rules relative to the service of warrants. Warrants issued by the court shall be valid throughout the state.

§ 32-b. Form of warrant. A warrant of arrest may be substantially in the following form, the blanks to be filled in:

"State of New York }
County of..... }ss:

In the name of the people of the state of New York, to any peace officer in the state of New York.

A petition under oath having this day been laid before me showing that is legally chargeable with the support of and has failed to provide such support and praying this court to exercise its powers to compel such support.

You are, therefore, commanded forthwith to arrest the above named and bring him before this court at

Dated at, the day of, 19....

.....
Judge of the Children's Court
County of....."

§ 32-c. Service of summons and other process. Summons and process other than warrants may be served through the mails, but a default order shall not be entered or a warrant issued thereon for failure to obey a summons or process thus served except on proof that it was received by the respondent. Personal service of summons or other process shall be made by the delivery of a true copy thereof to the person summoned. In all cases service of summons must be made within a reasonable time before the time stated therein for such appearance, as may be provided by the rules of the court.

§ 33. Trial. Upon the return of the summons or when a respondent is brought before the court upon an arrest the court shall proceed to try and determine the charge of non-support. If

upon such trial the court shall find by competent evidence or by a plea of guilty of the respondent that he is guilty of non-support, the court may make an order requiring such respondent to pay weekly, or at other fixed periods, a fair and reasonable sum for, or towards, the support of the petitioner, and to observe such conditions of behavior as the court may determine, or the court may commit him to jail for not exceeding six months.

§ 33-a. Procedure at trials; rules. Trials shall be conducted by the court without a jury and in accordance with such rules as the court may adopt. The court may adjourn the hearing from time to time for proper cause. Where the petitioner's needs are so urgent as to require it, the court may make a temporary order for support pending final determination.

§ 33-b. Right to counsel. At the commencement of a trial under the provisions of sections thirty-three and thirty-three-a, the court shall inform the respondent of his right to the aid of counsel at every stage of the proceedings and before any further proceedings are had and shall also inform him of the charge against him.

§ 33-c. Presumptions. In any such trial wives and husbands shall be competent witnesses against each other; a husband or father shall, *prima facie*, be presumed to have sufficient means to support his wife and children; a dependent minor poor relative without means to maintain himself shall be presumed to be likely to become a public charge.

§ 33-d. Failure to obey order for support. 1. Where a respondent shall neglect or refuse to obey an order for support made by the court and the court is satisfied thereof by competent proof, it may, without notice, issue a warrant to commit the respondent to jail until the order is obeyed or until the respondent is discharged according to law, but in no event for a period exceeding six months.

2. Where a respondent employed in any department of the county or political subdivision thereof, or a respondent receiving a pension from any such department or from a board of a political subdivision of said county, shall neglect or refuse to obey an order for support made under the provisions of section thirty-three, and the court is satisfied by competent proof, it may enter an order

directing the auditor, comptroller or disbursing officer of any pension fund to deduct regularly from such respondent's salary, compensation or pension, sufficient moneys to comply with the order of the court and pay the amount so deducted from such salary or pension directly to the appropriate officer or official of the court for the benefit of the petitioner.

§ 33-e. Writ of seizure. Where an order in this court for support has been made and the respondent has failed to obey it and has left, or threatens to leave, the jurisdiction of the court, and possesses property within that jurisdiction, or where no order has been made, but it is set forth in the petition for such support that the petitioner has been deserted by the respondent who has left the county and whose whereabouts are unknown and who possesses property within the jurisdiction, such property, by application to the court, may be taken, seized and applied in the manner provided in title eight of part six of the code of criminal procedure.

§ 33-f. Suspension of sentence; probation. In the case of a respondent found guilty of non-support or where the respondent shall have neglected or refused to obey an order for support as provided in sections thirty-three and thirty-three-d, the court may suspend sentence or the execution of the warrant, as the case may be, and prescribe certain reasonable conditions within the powers of the court as provided by this article which said respondent shall comply with; or may place him on probation under such conditions as the court may determine, in accordance with the provisions of this act and the code of criminal procedure. The period of probation may continue so long as the order of support or order of protection, as herein defined, is in effect. No person, however, shall be placed on probation unless an order to that effect is made by the court.

§ 33-g. Revocation of suspension of sentence or probation. The court may at any time, where circumstances warrant it, revoke the suspension of the sentence or the execution of the warrant, as the case may be, or the probation of a respondent. Upon such revocation the respondent shall be brought to court and shall be dealt with by the court as if there has been no suspension of sentence or

warrant, and to that end, without a further hearing, the court may make any order that might have been made at the time of such suspension.

§ 33-h. Bond. Where the court has suspended sentence upon a respondent it may require him to give an undertaking as herein-after provided in this article.

§ 33-i. Divorces; separations; annulments. Where a divorce, separation or annulment has been granted to the petitioner by the supreme court or a suit for such relief is pending and the respondent has been required under the terms of any order or decree entered in such separation, divorce or annulment proceeding to pay a specified sum to the petitioner or her children as alimony or maintenance and has failed to do so, that fact shall not be a bar to a proceeding in this court to compel support within the limits of the order of the supreme court and as set forth by section thirty-a of this article, provided that the respondent is not in jail for failure to obey the order of the supreme court. An action for divorce, separation or annulment pending in the supreme court shall not prevent this court from entertaining a petition for support if it is shown to the satisfaction of this court that the petitioner is likely to become a public charge. After final adjudication by the supreme court denying alimony in a separation action, if in the opinion of this court the circumstances of the parties have changed or if it is shown to the satisfaction of this court that the petitioner is likely to become a public charge, this court may entertain a petition for support. An agreement to separate shall in no way preclude the filing of a petition for the support of a child or the making of an order for its support by this court.

§ 33-j. The county not a necessary party. Except where the petitioner is likely to become a public charge, the county is not necessarily a party to an action for support. The county or any other agency may in appropriate cases file the petition.

§ 33-k. Bonds for support; bail for appearance; forfeiture; payment. If a bond for support be required of the respondent, or if he be admitted to bail for appearance at court, the condition of the undertaking shall be for his future compliance with the court's order for support, or his appearance according to the terms

thereof, or in default thereof that the surety will pay to the clerk of the court a specified sum as therein set forth. Instead of entering into such an undertaking a respondent may deposit money in an amount to be fixed by the court. If the respondent fails to appear in accordance with the terms of the undertaking, the court shall enter the fact of such non-appearance upon the record, and the undertaking for his appearance, or the money deposited in lieu thereof, shall be forfeited and upon order of the court the sum recovered shall be applied by the clerk of the court in such weekly or monthly installments or in such other manner as the court shall direct, for the benefit of the petitioner. The court may, however, in its discretion, remit such forfeiture. It shall be the duty of the sheriff of the county to receive, when tendered in cash, the sums fixed by the court as bonds for support and bail for appearance, and thereupon to release the respondent from custody, and to remit forthwith all such sums received, directly to the clerk of this court.

§ 33-l. Procedure when court is not in session. If a respondent is arrested at a time when this court is not in session, he shall be taken to the most accessible magistrate and arraigned before him. The production of the warrant shall be evidence of the filing of a proper information, and the magistrate shall thereupon hold the respondent, admit to, fix or accept bail, or parole him for trial before this court. All subsequent proceedings shall be had by this court.

§ 33-m. Erroneous arraignment before a magistrate. Whenever a person is brought before a magistrate and, in the opinion of such magistrate, the person should properly be brought to this court, the magistrate shall thereupon transfer such case to this court and direct that the persons involved be taken there.

§ 33-n. Respondents in jail. Where a respondent has been committed to jail he shall be visited shortly after such commitment by a probation officer assigned for duty for the purpose of seeing whether he is then likely to obey the orders of the court if released. A report in writing shall be made to the court by the probation officer, setting forth the nature of the interview thus had. The time of making the initial visit and subsequent visits to

respondents in jail, which shall be made at reasonably frequent intervals, shall be at such times as the court may prescribe.

§ 33-o. Acceptance of undertaking by magistrates. Where bail has been fixed or an undertaking for support has been required by this court, if this court is not in session any magistrate to whom application is made shall pass on the sufficiency of the undertaking and may accept such bail or undertaking for support and shall forward it to this court.

§ 34. Undertaking for support. The court may require the respondent to give to the clerk a written undertaking with sufficient surety approved by the court that the respondent will abide by the order for support. Such undertaking shall be for a definite period, not to exceed three years, and the required amount of the principal of such undertaking shall not exceed the total payments for support required for three years and shall be stated in the order for support. The respondent may deposit such sum in cash with the clerk. The court may in its discretion require either such written undertaking with sufficient surety approved by the court or may require that cash be posted to secure compliance by the respondent with the order for support for such period. In the event that the respondent shall fail to make any payment, when due, within such period, payment shall be made to the petitioner out of such cash. When cash is posted as security, as herein provided, the person or persons so posting such cash shall at the expiration of the period for which such security shall have been ordered be entitled to the return of such cash less any amount which shall have been paid therefrom to the petitioner by reason of any default or defaults in payment on the part of the respondent. The form of the undertaking and the form and manner of justification of the surety shall conform to the rules of the court.

§ 34-a. Undertaking to be filed. If the property securing the undertaking consists of real estate, the undertaking shall be filed with the county clerk of the county in which the real estate is located and the same shall constitute a lien upon the real estate specified in the undertaking. The county clerk of each respective county is hereby directed to accept such undertaking for filing and to provide proper and sufficient books and indexes wherein the same shall be entered.

§ 34-b. Substitution of surety. The court may at any time thereafter, before or after there has been a default, if all arrears have been paid in case there shall have been a default on such undertaking, accept a new undertaking in lieu of the original undertaking, and the court shall enter an order discharging such undertaking.

§ 34-c. Default. A default in the terms of the order shall constitute a breach of the undertaking. When there has been a default the court shall cause an affidavit to be drawn, verified and filed by a person familiar with the facts. The parties bound by the security shall thereupon be personally served with notice of such default and they shall be required to attend at the court on a day certain and show cause why judgment should not be entered on the undertaking and the amount thereof applied to the relief of the petitioner for the amount in default. If either of the parties appears and pays the amount in arrears the court may remit the forfeiture. Inability to serve the parties, or either of them, shall not be prejudicial to the renewal of proceedings against the respondent.

§ 34-d. Procedure as to defaults. If the parties, or either of them, contests the default, the court shall hear and determine the issue. In the event that the court finds that a default has been suffered, it shall make an order specifying the amount in default and forfeiting the undertaking or cash deposit to the extent of such default. A certified copy of such order shall be filed in the county clerk's office with a certified copy of the undertaking and thereupon the said clerk shall docket the same in the book kept by him for docketing of judgments, as if the same were a transcript of a judgment directed for the amount of such sum in default. The certified copy of the undertaking and of the order shall be the judgment record. Such judgment shall be a lien on all of the real estate and collectible out of the real and personal property of the parties bound by the security, or either of them. An execution may be issued to collect the amount thereof in the same manner as upon a judgment recovered in any court of record. It shall be the duty of the county attorney to take the necessary proceedings to collect such judgments.

§ 34-e. Forfeiture applied to support of petitioner. 1. All sums collected from the surety by judgment, as well as forfeited cash deposits, shall be applied by the clerk of the court to the support of the petitioners for whose benefit the order for support was made. Subsequent defaults shall be proceeded upon in the same manner until the amount of the principal of the undertaking or the cash deposited has been recovered in full.

2. Where the respondent, or anyone in his behalf, shall have deposited with the court moneys as surety for compliance with the terms of the order of support and the respondent shall have died, the court may make an order directing the payment to the petitioner of all moneys still in possession of the court in conformance with the order of support.

§ 34-f. Surrender of respondent by surety. A surety may at any time surrender a respondent to the court. The respondent shall thereupon be dealt with as provided in the order for support. If the arrears on the order for support with interest thereon are paid in full, the court may make an order discharging the surety of any further liability and directing the return of the balance of the cash on deposit to the person entitled thereto.

§ 34-g. Termination of surety's liability. Whenever the liability on an undertaking has ceased, the court shall make an order to that effect. Upon receipt of a certified copy of the order, the county clerk shall discharge of record the lien of the undertaking.

§ 34-h. When new security required. After an undertaking has been given or cash has been deposited and it shall appear upon proof by affidavit either (a) that a judgment entered upon default cannot be collected; or

(b) that the liability of the surety has ceased; or

(c) that the money deposited has been applied in full; or

(d) that personal service cannot be effected upon the surety or the person depositing the cash; or

(e) if for any reason the court shall find that there is not sufficient security, the court may issue a warrant for the arrest of the respondent and require him to give new or additional security. In default thereof the court may commit him under the original order in the manner hereinbefore provided.

§ 2. This act shall take effect immediately.

4 No action was taken in 1940 on Senate bill No. 237, with its companion bill Assembly No. 314 of the same year. But in 1941, as Senate No. 410 and Assembly No. 612, this bill passed both Houses, only to be vetoed by the Governor, without memorandum.

By amending the state-wide Children's Court Act of 1922, this bill provides for the filling of vacancies occurring in the office of a children's court judge within three months of the general election, instead of as it is now. Under this amendment, such a vacancy, occurring not later than October 15th of any year could be filled at the next general election.

This bill has been repeatedly endorsed by the State Association of Judges of Children's Courts.

An Act TO AMEND THE CHILDREN'S COURT ACT OF THE STATE OF NEW YORK, IN RELATION TO FILLING VACANCIES IN THE OFFICE OF A CHILDREN'S COURT JUDGE

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision seven of section four of chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," as amended by chapter three hundred and ninety-three of the laws of nineteen hundred thirty, is hereby amended to read as follows:

7. A presiding judge of the children's court of any county may hold children's court in any other county when requested by the presiding judge of the children's court of such other county. **[**When a vacancy shall occur otherwise than by expiration of term in the office of a children's court judge, the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and until the

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

vacancy shall be so filled the governor by and with the advice and consent of the senate, if the senate shall be in session, if not in session the governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.】

§ 2. This act shall take effect immediately.

5 Senate bill No. 1751 of 1941, later amended and known as Senate bill No. 2522 passed both Houses of the Legislature, but was vetoed by the Governor, without memorandum. The bill specified the following provisions which were separately embodied in Senate No. 1834 of 1941, which was not enacted:

1. To permit the City Corporation Counsel to represent the Court in any proceeding where the Court's action is under review, where now he may represent only the petitioner;
2. Further to permit the City to file a petition in a support action;
3. To empower the Corporation Counsel to assign a representative to petitioners who are not otherwise represented by counsel;
4. To allow the Corporation Counsel—in his discretion—to represent the petitioner also in cases of appeal to another Court.

An additional amendment which was not included in Senate No. 1834 would allow a New York City department, in appropriate cases, to file a non-support petition in the name of the Commissioner of that city department.

An incidental purpose was to empower the presiding justice of the New York City Court of Domestic Relations to appoint a secretary who would be paid a salary commensurate with that paid the secretaries of other New York City Chief Justices of comparable status and responsibility.

An Act TO AMEND THE DOMESTIC RELATIONS COURT ACT OF THE CITY OF NEW YORK, IN RELATION TO THE POWERS AND DUTIES OF THE PRESIDING JUSTICE AND PROVIDING COUNSEL FOR THE PETITIONER AND THE COURT IN TRIAL AND APPELLATE PROCEEDINGS

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section fourteen of chapter four hundred and eighty-two of the laws of nineteen hundred thirty-three, entitled "An act to establish in and for the city of New York a court of domestic relations, to be known as the domestic relations court of the city of New York, and defining its powers, jurisdiction and procedure and providing for its organization," is hereby amended to read as follows:

§ 14. Duties and powers of presiding justice. The presiding justice is the official administrative head of the court and in addition to his other duties as a justice shall have the general superintendence of the business of the court. He shall act as chairman of the board of justices and shall preside and be entitled to a vote at all the meetings of such board. He shall assign the justices to duty in the several divisions and parts of the court and may make changes in such assignments from time to time. It shall be the duty of each justice to attend and hold sessions at any part to which he may be so assigned.

The presiding justice shall prescribe the hours for the attendance at the various parts of the court of the clerks and employees. He shall cause to be established and supervised a system for keeping the records of the court and its various bureaus and divisions. He may designate a justice to act as presiding justice during his absence from duty, who when thus serving shall have all the

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

powers of the presiding justice. In the event of his failure to make such designation, the mayor shall designate an acting presiding justice. Whenever in his judgment it is necessary the presiding justice may call a special meeting of the board of justices, and upon the written request of three or more justices must call such a meeting.

He shall have power to appoint a secretary, who shall be in the exempt class of the civil service and who shall be paid for his services a salary which shall be commensurate with the salary paid to the secretaries to the chief city magistrate and the chief justice of the court of special sessions at the time this act takes effect.

§ 2. Section fifty-nine of such chapter as added by chapter four hundred and thirty-one of the laws of nineteen hundred forty, is hereby repealed, and in lieu thereof a new section fifty-nine is hereby added to read as follows:

§ 59. *Counsel. The corporation counsel shall act as counsel to the court and shall take charge of all legal proceedings on behalf of the court where the court's action is under review, except in cases where he represents a petitioner in any appellate court to which such petitioner may appeal.*

§ 3. Section one hundred and thirty-eight of such chapter is hereby amended to read as follows:

§ 138. **【The city not a necessary party.】** *The city as a party. 【Except where the petitioner is likely to become a public charge, the city is not necessarily a party to an action for support.】 A department of the city of New York in an appropriate case may file in the name of its commissioner the petition in a proceeding for support. 【The city may in appropriate cases file the petition.】* The corporation counsel shall assign to each part of the family court a representative, who, unless the petitioner is represented by counsel, **【shall】** *may* represent the petitioner **【unless otherwise directed by the family court】**. *The corporation counsel, in his discretion, may also represent such petitioner in any appellate court to which such petitioner may appeal.* The absence of the corporation counsel's representative from any hearing, however, shall not be deemed to invalidate or impair the proceedings.

§ 4. This act shall take effect immediately.

6 The final bill in this chapter has been twice before submitted by this Committee. In 1940, it was known as Senate bill No. 238, Assembly No. 313. It was not approved, and was again introduced in 1941 as Senate bill No. 539, amended, and known as Senate No. 1209 when amended. It was introduced in the Assembly under No. 711.

It has seemed to this Committee, throughout the years of its study of the problem of delinquency, that no one agency dealing with delinquency—its prevention or treatment—can be considered separate and apart from all the other agencies in the long chain of influences bearing upon the care and welfare of children in this State. The court process is but one link in the chain of apprehension, hearing and treatment of delinquents. The Court must await complaints by the police—or by parents, schools or other agencies—before it can act. It must rely to some degree on clinical and other agencies in its investigation, and must turn to private as well as public agencies for the treatment of children requiring care in places other than their own homes.

Despite the discontinuity of some of these steps in the Court's dealing with delinquents, the growth of these children is a continuing process. However many agencies or individuals may be drawn in to help him, the child continues to develop out of what he has been, together with whatever influences he is subjected to while he is under the care of the Court or other agencies and individuals to which the Court may—however temporarily—assign him.

We have attempted throughout our deliberations to keep in mind the necessity for *continuity* in the handling of children requiring special care. To this end we have submitted above (see pp. 238-245) a bill to give the Court power to deal informally with conditions of pre-delinquency, to this same end we submit again the following bill to give the Court a continuing interest in the child after he has been placed for treatment in the custody of an agency.

At the present time, no one agency is clearly responsible for working to improve the conditions in the home when the child is

removed from it because of neglect, or committed because of delinquency. Unquestionably, some one should be responsible for an effort to improve the home so that the child may be safely returned to it. Even those who were opposed to the bill consider this objective to be highly desirable.

We believe that the court which first ordered the child to be placed out or committed is in the most advantageous position to evaluate conditions affecting him and to select the agency which can work to his best advantage. While the Department of Public Welfare may be designated in proper cases, private agencies, under the terms of this bill, would be given the backing of the Court in the cases of certain children where the Court was of the opinion that they could be of assistance in working with them in the home, and these agencies could not but do a more efficient job as a result.

An act or condition of delinquency is not an isolated thing. The Court is not interested alone in adjudicating or treating a delinquent condition, it is interested in the *prevention* of further misconduct, in removing delinquency, and otherwise improving the home so that the child, whom the Court places out or commits, upon his return to it, will have a better place to live.

Objections to this bill in its 1940 version, before it was amended, were based on the fear that the Court, through its continuing interest in the child who had been committed to an institution or agency, might interfere with the administration of that institution or agency. The Committee considered that these objections were not without merit, and therefore the public institutions were omitted from the terms of the 1941 bill, which is presented here without further change.

The bill affects only private institutions, and only such private agencies as were "willing to act" could be designated by the Court. Some institutions and some agencies now consider that work with the home is part of their treatment program for children. Others do not. It is one of the aims of this bill to allow the Court to select for work in the home and community those agencies which follow this procedure, thus encouraging all children's agencies to raise their standards and broaden their interest

to include the home to which, after a necessary period of training, the child is to be returned.

The Court now has authority to order the release or discharge of any child from an agency to which the Court has committed him, or to transfer him from one such agency to another. This continuing interest on the part of the Court bespeaks an integration of Court dealing and agency care which together strive for a consistent plan of treatment for the delinquent child. Various schemes have been proposed to this Committee to ensure greater continuity in the Court process. These are considered in the following chapter. Until the time when the Legislature sees fit to limit commitment by the Court to a treatment board or central training authority, the Court will continue to commit directly to a wide variety of institutions and agencies. Lacking any other centralized administrative body which will exercise a continuing oversight in cases of placed-out or committed children, the Court will have to exercise some degree of interest in the home and community conditions to which the child is to be returned. In the opinion of this Committee, this power neither contemplates nor permits any intrusion on the part of the Court into the management of any agency to which this act refers.

The end purpose and result of Court action is the "satisfactory adjustment" of the child to his home and community. In this process of adjustment, the child is not the only factor: a term of agency or institutional care cannot—unaided—accomplish the desired result. Prepared by his period of training to adjust better to his home, it is only reasonable to expect that some care and attention given to the conditions which contributed to his original difficulty, will ensure at least an easier transition to his original environment.

It has now become fully established and accepted that crime in later adulthood can only be prevented by care in the earlier years of children showing manifest symptoms of maladjustment. But unless such a course of treatment is continuous and integrated, it will achieve no high standard of success in preventing the development of delinquency into crime, and crime into a career.

An Act TO AMEND THE CHILDREN'S COURT
ACT OF THE STATE OF NEW YORK, IN RELATION TO THE
PREPARATION FOR THE RETURN OF A CHILD TO ITS OWN
HOME AFTER COMMITMENT TO AN AUTHORIZED AGENCY

*The People of the State of New York,
represented in Senate and Assembly, do enact as follows:*

Section 1. Chapter five hundred and forty-seven of the laws of nineteen hundred twenty-two, entitled "An act establishing children's courts, defining their jurisdiction, power and duties, and regulating procedure therein," is hereby amended by adding thereto a new section, to be section twenty-seven-a, to read as follows:

§ 27-a. *Preparation for return of child to its own home. Whenever a child is placed in the custody of an authorized agency the court shall at the time of such placement give consideration to the eventual discharge of such child and its return to the home, community and environment from which it was removed. In order that such child may derive the utmost benefit from such commitment the court shall be empowered to designate and appoint either its own probation officers, or those of the authorized agency to which the child has been committed, or any other suitable agency willing to accept such designation and appointment, to act as a liaison between the placement agency and the child, its home and community, for the purpose of adapting the training and treatment of such child while in the agency so as to best prepare such child for its return to its own home and community, and also for the purpose of correcting or removing the conditions in the home which contributed to such child's delinquency or neglect; all toward the end that such child may be returned to an environment which will enable such child to*

EXPLANATION: Matter in *italics* is new; matter in brackets [] is old law to be omitted.

enjoy and put into practice the training and treatment received during such placement. The authorized agency so designated and appointed shall have the power of probation officers. The court may release such child from the placement agency conditionally and the persons or agency designated and appointed by the court may be authorized to continue supervision of such child until in the opinion of the court such child has become satisfactorily adjusted, at which time the court may discharge the child

§ 2. This act shall take effect immediately.

PART FIVE

CHAPTER **XII.** MISCELLANEOUS

PROPOSALS CONSIDERED

BY THE COMMITTEE

In addition to the specific recommendations made in other chapters of this report, the Committee devoted a great deal of time and attention to certain rather general proposals brought to its attention by witnesses and others who felt that the Legislature and the people of New York State were entitled to an opinion regarding them. Some of these proposals were not germane to our inquiries, while others merit detailed consideration. These latter group themselves into various specific headings under which they will be treated in this chapter: suggestions relating to a state-wide system of minor's courts; recommendations relating to crime prevention services; consideration of the two model statutes of the American Law Institute: the Youth Correction Authority Act and the Youth Court Act; proposals patterned after the English system of Borstal Institutions for young offenders.

A description of these proposals, and the Committee's recommendations regarding them, are set out below.

A State-wide System of Minor's Courts

The Committee has given a great deal of time and consideration to the advisability of scrapping the entire Children's Court process and setting aside the special adolescent's court procedure as it has been developed in New York City, creating in place of these two agencies an entirely new court set-up which might include offenders under the age of sixteen as well as those over

this age. We have stated above that, in essence, there is little to distinguish the problem of juvenile delinquency from that of adolescent criminality. We can contemplate with some satisfaction the idea of a minor's court which would have a children's division and a youth division. We can easily list several counties in the State which might profitably establish such a minor's court. Certainly there is little essential difference between the need and condition which now brings a juvenile before the children's court and that need and condition which dictates a special consideration of the adolescent in the youth court.

Nevertheless, we believe that the courts of this State have had too little experience with the problem of the adolescent offender to merit the creation of such a minor's court at this point. After all, the idea of the adolescent court is only six years old, and its application has been limited to two counties of the 62 in the State. There are only three large cities in the United States, outside of New York, where special court machinery for youths has been created.

The passage of a state-wide minor's court act would not only disturb the present excellent standard of service being rendered by the children's courts throughout the State, but might also cause some confusion to the valuable work of the Domestic Relations Court in New York City.

We have stated above that by the establishment of a Youth Court in New York City, and in up-state counties, we have taken a long step toward an eventual state-wide system of such courts. These first steps toward the creation of a youth court parallel the development of the children's courts in their first decade.

The day will come when the courts, institutions and agencies of this State will have had sufficient experience with the specialized dealing with adolescents so as to merit this more extensive plan of court machinery. The Committee believes that time has not yet arrived.

Crime Prevention

Although the Resolutions creating and continuing this Committee made no mention of the matter of crime prevention, the

Committee has been compelled to pay some attention to this problem because of the earnestness with which this subject was committed to us by numerous witnesses who appeared before us at public hearings.

It is the Committee's belief that through the bills submitted by it, allowing children's courts to deal informally with mal-adjusted children brought to their attention, as well as through the bills we have submitted which strengthen the hand of the Court in dealing with adults who contribute to dependency and delinquency, we have made no small contribution toward the solution of this problem. It is the Committee's further opinion that the bills submitted to create youth courts in this State are a further step toward diminishing crime among young people.

There are throughout the State large numbers of agencies, both public and private, which deal in an effective way with behavior difficulties among children which have not yet developed into legally recognized delinquency. The Committee has stated above, and it here repeats, that the measures undertaken by any society or individual which aim to reduce the social and economic disabilities under which certain sections of our population live, can be described as crime preventive. There is no doubt that children who come before our courts represent the neglect or failure of these agencies to deal early enough or effectively enough with maladjusted children.

We believe further that all the agencies which are now undertaking crime prevention programs would be benefitted greatly if they were to have one central body within the State government to which they could refer for advice and stimulation. There are ample precedents in other fields of social problems to which reference can be made: the State Department of Health provides a special division for Preventable Diseases, while the State Department of Mental Hygiene is provided with a Bureau which encourages the extension of child guidance care and preventive work in mental hygiene.

Following a conference called by him in 1935 on "Crime, the Criminal and Society", the Governor presented a sixty point anti-crime program to the Legislature. In that program the

Governor stated: "We must place more emphasis on crime prevention. . . . A preventive program is harder to organize than a curative or punitive program. The fundamental aspects of a prevention program center around the personality problems of the individual on the one hand and his social setting on the other hand. . . . While I am convinced that a new governmental agency is required to develop an effective prevention program, such a plan predicates increased rather than lessened responsibility in such basic agencies as our schools, our churches, local crime prevention bureaus and social agencies generally, that mould for good or evil the lives of the pre-delinquents. . . . Crime prevention must always be regarded as primarily a local problem . . . yet the State can and must assist in the development of a program of crime prevention that should prove as profitable as have similar programs in the field of health. I recommend that there be set up within the Executive Department a Bureau of Crime Prevention, the function of which shall be to assume leadership in the stimulation, development and co-ordination of local crime prevention activities. This Bureau should:

- a. Stimulate State departments to develop their facilities and methods to control the factors entering into delinquency and crime.
- b. Visit, study and evaluate conditions in communities throughout the State and advise local agencies as to the organization and development of needed programs.
- c. Collate, interpret and publicize statistics and reports relating to the problem of juvenile delinquency and crime.
- d. As need arises, prepare and sponsor legislation bearing upon the many specific problems incident to crime prevention".

Regarding the personnel of such a Bureau of Crime Prevention, the Governor further stated that it "should consist of a competent director, possessed of a liberal education and technical knowledge and experience, together with special qualifications for advisory work; and an advisory council of ten members, appointed by the Governor, to include representatives of agencies interested in the fundamental problem of crime prevention. In addition

there should be field workers sufficient in number and competency to do the work of the Bureau". Concluding his statement about crime prevention the Governor said: "The coordination of existing agencies, the planning to meet local needs, and above all, the stimulation, publicity and approval that the Bureau can provide are essential to an effective program if we are to stop the flow of juvenile delinquency at its source".

We wish further to emphasize that the important function of such a crime prevention bureau should be not only the development of a plan which would reduce delinquency and crime, but that it should also give assistance to existing agencies through setting out the techniques of operation of crime prevention agencies, that it should serve as a guide in the various communities of the State and should also undertake the responsibility of evaluating the work now being done by various crime prevention organizations. There is a wide variety of opinion as to the best method of approach and technique generally, with the result that different agencies frequently proceed without the necessary coordination of effort. It should lie within the function of such a crime prevention bureau at least to suggest in an advisory way that certain separate undertakings be combined in the interest not only of economics but of results as well.

Whether or not such a crime prevention bureau should be part of a larger division—such as a Youth Service Council to be concerned with the problems of youth generally—or whether it should be separate and distinct, is for the Legislature to determine. There is no question but what the delinquency of children and the criminality of adolescents is intimately bound up with the other problems of young people—such as unemployment, recreational, vocational and educational needs, the lack of adequate wholesome leisure time activities, etc. By placing the Crime Prevention Bureau in such a Youth Service Council, the Committee believes that crime preventive activities within the State will be seen as part of the entire problem of youth. It is of little immediate concern, however, whether such a bureau be an independent agency or whether it be part of a larger division. The important thing is that there be some division of the State Govern-

ment which is actively concerned with reducing the toll of crime among its young citizens.

American Law Institute Proposals

THE YOUTH CORRECTION AUTHORITY ACT

THE MODEL ACT. This statute initiated by the American Law Institute, was considered and drafted over a two year period, during which eleven experts in law, psychiatry, criminology, sociology and penology met at some fourteen conferences. In the time which has elapsed since its adoption by the members of the Institute in May, 1940 the Act has been expounded, criticized and applauded by all kinds of people, professionally and otherwise interested in the problem of the older adolescent offender. Because so much discussion has arisen around this Model Act, the Committee feels that it is deserving of attention here.

The main provision of this proposed statute is the creation of an independent agency in the State Government—the "Youth Correction Authority"—with state-wide jurisdiction to provide and administer corrective and protective training and treatment services for persons between the ages of sixteen and twenty-one who are committed to it by the courts.

There has been a great deal of discussion in recent years regarding the separation of the guilt-finding and sentencing functions of the judge. It will be recalled that almost fifteen years ago, the Governor of our own State made such a recommendation in a public address. One of the reasons for this suggestion is the well known fact that judges not only do not visit institutions but that they do not interest themselves—for one reason or another—in the treatment and training of cases which they have sentenced, nor in the continuity of the cases which they have committed to institutions.

In the non-criminal children's courts of the State, judges are not simply umpires in the limited sense of a generation ago; their duties are not confined to hearing the evidence and declaring the disposition. They are directors, also, of treatment bureaus and staffs of supervising personnel known as probation officers. They are expected to be expert diagnosticians and therapists in prob-

lems of individual adjustment; it is not sufficient for them, nowadays at least, simply to commit their cases to the supervision of institutions, probation officers and private agencies and then to forget them. They are expected to exercise a continuing interest in the children whom they have adjudicated.

The underlying purpose of the Youth Correction Authority Act is clear and admirable: "to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of young persons found guilty of violation of law". Under this Act, judges would commit to the Authority after a finding of guilt, and the Authority would be given the continuing control over the treatment and training of the offender. They would act in the cases of adolescent offenders as judges of the children's court are now expected to act in the cases of children under the age of sixteen.

In order that the three well qualified members of the Authority (to be appointed by the Governor) may have an opportunity to establish an effective procedure and to profit from the experience of dealing with cases, their term of office is set at nine years and they are required to devote all their time to this work.

Before the Authority may receive commitments from the courts, it must first certify to the Governor that it has approved, or established, places of detention, examination and treatment-training for the proper discharge of its duties and functions. Upon such certification, the courts of the State shall commit convicted offenders between the ages of sixteen and twenty-one to the Authority. Certain classes of offenses are excluded from its jurisdiction: those for which death or imprisonment for life may be imposed by the court; those for which imprisonment for less than thirty days, or a suspended sentence, or payment of a fine are imposed by the court. The Authority is further empowered, in its discretion, to accept commitments from the children's court of children sixteen years of age or over.

In order to protect the rights of a person convicted of a violation of law, no alteration is made in the present appeal procedure. Pending such an appeal, the convicted offender may be allowed

at liberty under such conditions as will ensure his cooperation and submission to the control of the Authority.

Upon committing a convicted offender to the Authority, the judge is required to notify the Authority in writing; he, as well as the prosecuting and police authorities and other public officials, is required to make available to the Authority all pertinent information regarding the offender.

The Authority is given control over evidence specifically appropriate to its use; it is authorized to make rules for the proper discharge of its duties; it may establish treatment-training services; create administrative districts and employ needed personnel under the Civil Service laws of the State.

The Authority is further authorized to call upon and make use of such facilities—legal, investigative, detention, probation, parole, medical, educational, correctional, segregative—as may be necessary for carrying out its duties. The Authority is not, however, given control over such institutions or agencies nor is it empowered to make use of private facilities without their consent or without reimbursement. The Authority is, of course, granted the right to inspect the institution whose facilities it is authorized to use. Release from an institution or agency to which the Authority has committed may not be done without its approval.

The Authority is required to examine, study and investigate the background and history of persons committed to it and further to make periodic re-examinations of all persons within its control at intervals not exceeding two years. It is required to keep written records of all these examinations, conclusions and orders.

Persons committed to the Authority may be kept under supervision "so long as in its judgment such control is necessary for the protection of the public". This unlimited power is carefully circumscribed: a committed youth shall not be held subject to its control beyond his twenty-fifth birthday unless the Authority has applied to the Court for a review. Such an order and application for review must be made to the Court at least six months before the time for discharge and it must be accompanied by a

written statement of the facts upon which the Authority bases its opinion that discharge would be dangerous to the public. The person whose liberty is involved must be given an opportunity to appear in court, with counsel, and to compel attendance of witnesses and the production of evidence. The court may confirm or disapprove the order of the Authority and, in the latter case, shall order the person to be discharged from the control of the Authority. In order for the Authority to continue its control beyond the established three year period, it shall, every two years, apply to the court for a further review. "Such orders and applications may be repeated at intervals as often as in the opinion of the Authority may be necessary for the protection of the public".

A person committed to the Authority may be permitted at liberty under supervision whether confined or not; may be required to participate in vocational, physical, educational and correctional training activities; may be required to conduct himself in such a way as seems best adapted to fit him to return to full liberty; may be required to submit to other methods of treatment conducive to the prevention of future violations of law by him.

This action is not so novel or so revolutionary as it may appear upon first reading. In essence, it is a plan to place the treatment of a convicted adolescent offender in the hands of an expert body of persons fitted by training and experience to direct such treatment, and so equipped with a wide variety of treatment facilities as to ensure to the public that the offender will not be discharged until he is no longer a menace to society. The constitutional rights of the offender are in no way impaired or infringed upon by this plan. The Authority may not hold offenders committed to it for an initial period longer than three years without having a court review its decision; such review must take place at intervals not greater than two years.

In our own State the "Napanoch Law" permits the courts to commit a "defective delinquent" who is beyond children's court age to various institutions if he is "not insane nor of unsound mind to such an extent as to require his commitment to an insti-

tution for the insane" but is so mentally defective as "for his own welfare or the welfare of others or of the community to require supervision, control or care". (Laws of 1927, section 126). Such care and segregation is authorized by this law for an indefinite period or until the person so committed is considered reasonably safe to be at large.

This Committee recommends that the Youth Correction Authority plan be more fully considered with a view to its application to New York State as an advanced procedure for the handling of the adolescent offender after the State has had further experience with the system of youth courts recommended by this report.

THE NEW YORK REVISION. During the 1941 Legislative session a revision of the Youth Correction Authority Act was introduced in the New York State Legislature. It may be of interest to make a brief comparison between the bill as introduced and the model act.

The first point of importance is that the Youth Correction Division is placed in the Executive Department, as is the existing board of parole, and is not made a part of any other existing State Department.

The model act makes provision for the removal of members of the Youth Correction Authority in the same manner as judges are removed, whereas the New York revision permits members of the Authority to be removed by the Governor for cause and after an opportunity to be heard.

Because of the size of New York State and the number of offenders to be dealt with, the revised act allows the establishment of branch offices in other parts of the State—in addition to the principal office at Albany. The revised act is also quite specific in the procedure for the selection and appointment of personnel for the Youth Correction Authority.

The revised act appends a new section giving the Youth Correction Authority power to conduct an investigation of the convicted offender who has been remanded for a period longer than five days, when so directed by the court.

MISCELLANEOUS PROPOSALS

The Authority is also given additional power to issue subpoenas, compel the attendance of witnesses and the production of books, papers and other documents.

The New York Revision permits the Authority to create treatment services, such as camps, hostels, remand centers, etc. supplementary to those provided by existing institutions and agencies.

The revised act requires that the Authority shall make periodic examinations of all youths within its control at intervals not exceeding one year, whereas the model act sets this period at two years.

The Authority may permit youths committed to it by the Courts to be at liberty on probation under supervision.

THE CALIFORNIA STATUTE. The Youth Correction Authority Act was passed by the Legislature of the State of California and approved by the Governor on July 9, 1941. Because California is the first state to enact this plan, the Committee believes it may be of interest to learn wherein this law differs from the model act. The first consideration of importance is that the California law raises the limit of the jurisdiction of the Authority to age twenty-three, two years above that specified in the model act. For the first time a specialized procedure for dealing primarily with less than adult offenders has been extended beyond the age of legal infancy.

The California statute allows the Governor to fill only one of the three positions on the Authority directly, and specifies that the other two members shall be appointed from a list recommended by an advisory panel consisting of the presidents of four state-wide legal, medical and social work organizations. All appointments are subject to confirmation by the State Senate.

The California law limits the term of office of members of the Authority to four years instead of nine, at an annual salary of \$10,000, and allows non-residents of the State, who are particularly well qualified, to be appointed.

The California law does not allow the Authority to take jurisdiction over the convicted offender if his term of imprisonment is less than ninety days, and it exempts persons placed on proba-

tion from its jurisdiction. However, a person convicted of an offense for which the maximum penalty by law is imprisonment for less than ninety days, may be committed to the Authority if he has been previously convicted of an offense or if he has been a ward of the juvenile court.

Interestingly enough, the Authority is empowered to establish or aid in the establishment of crime prevention programs among young people and is further authorized to cooperate with any agency working for the improvement of recreational, health and other conditions affecting young persons.

While the Authority under the California law is not allowed to transfer any person under its control to a State institution for the insane or mentally defective, except in accordance with the regular procedure for commitments to these institutions, it is permitted to use these facilities for observation and diagnosis.

The California law allows the Authority to make periodic examinations of all persons within its control as frequently as it believes desirable, but requires that such examination shall be made at least annually; the model act sets this interval at two years.

The control of the Authority over persons committed to it terminates as follows:

- upon the expiration of two years in the case of persons committed by the juvenile court;

- upon the expiration of two years in the case of persons convicted of a misdemeanor;

- at age twenty-five in the case of persons convicted of a felony unless the Authority files a petition for retention of control after this age.

THE YOUTH COURT ACT

After the adoption of the Youth Correction Authority Act by the members of the American Law Institute, this body adopted a model act to establish youth courts in metropolitan and large urban centers. It is not so much a model statute as it is a declaration of fundamental principles drafted in the form of a specific act. This Act was drawn up by the same Committee of experts

who were responsible for the Youth Correction Authority Act: their names and their professional standing commend the Youth Court Act to the attention of this Committee and of the public at large.

The Youth Court plan has two basic objectives: to shorten the time which now elapses between the arrest of the adolescent offender and the final disposition of his case, and to improve the conditions under which he is apprehended and detained. As with the Youth Correction Authority Act, this Act is likewise limited to offenders beyond the age of sixteen but not yet twenty-one.

The Court organization calls for a Chief Justice and an unspecified number of Associate Justices, who are authorized to sit as examining magistrates as well as to try cases. This is done so as to eliminate the needless delay which now occurs in the hearing of a case because of division of responsibility between the courts charged with jurisdiction over the same offenses.

One of the relatively novel features of this Act is that it specifies the appointment by the Youth Court Justices of a "presenting attorney" whose duties and functions go far beyond those of the ordinary prosecuting attorney.

This presenting attorney is directly responsible to the Court, and his duties include: collection and organization of evidence relating to allegations and violations of law by persons within the age jurisdiction of the Court; co-operation with the police in securing evidence concerning the accused; determining—subject to approval of the judges of the court—the propriety of further action against the youth; drafting accusations; performing in general—concerning youths—the functions of the prosecuting attorney of the county; assisting the court "in protecting society and the individual and in administering justice to the innocent as well as the guilty". It will be seen that this is one of the most important provisions of the Act.

The presenting attorney is required to furnish to the youth court, at least once a week, a list of all cases which have not been disposed of by discharge or final judgment together with information regarding the date of arrest, date of the initiation of the proceeding and the state of the proceeding in each case. This

requirement would go far to prevent a great deal of unnecessary delay in the passing of cases through the various steps from arrest to final disposition. It would be most difficult under this system for cases of adolescents to hang on, untried, week after week—sometimes beyond two months and even into the third month—as is not unknown in this State.

The judge of the Court is empowered to appoint counsel for the youth, a public defender in effect, who "shall in all proper ways assist him in obtaining lawful judgment upon the merits of the case". Defense counsel is further permitted to enlist the services of the legal aid society or other voluntary defender organizations.

The judges of the Youth Court are authorized to appoint an administrative officer to keep its records, to list and assign cases for hearing and trial, and in other ways to perform the functions of a chief clerk. He is also given supervision over plant and structures under the control of the Youth Court and the management of detention places.

Because of the acknowledged harmful influences upon young defendants of the institution of the "bull-pen" in many court-houses, the justices of the Youth Court are authorized "to establish or approve for utilization appropriate places adjacent to court-rooms for safe custody of persons", and are authorized to visit and inspect places of detention.

Upon his arrest, any youth between the ages of sixteen and twenty-one must "be delivered into the custody of an officer and one of the places of detention" authorized by the Court. Thereupon the supervisor of the detention place must at once notify the Youth Court, through the presenting attorney, that it is holding the youth in custody. Thereafter the presenting attorney must verify the age of the offender and investigate the charge against him. He is also given the right to be present in person or through a designated agent whenever the youth is examined by the police or by other agencies. Modern court practice recognizes that the shorter the interval between arrest and the first questioning, the more likely is the truth to be discovered. Furthermore, by giving the presenting attorney the right to be pres-

ent during police custody some restraint is put upon them in their possible use of abusive methods.

Some limit is placed upon the presenting attorney's power to *nol pros*, by the requirement that he shall be of the opinion that the youth is not guilty and that he shall further enter in the records of the Court a full explanation of his reasons for so doing. The Children's Court of New York City has instituted the procedure of dismissing a charge against a child upon certain conditions, and the presenting attorney is similarly permitted to recommend to the judge that proceedings be discontinued and the youth discharged.

In order to reduce or eliminate one of the most frequent causes for unnecessary delay—the time required for indictment by the grand jury—the Youth Court is authorized to try cases “upon accusation by information in writing signed and sworn to by the presenting attorney”.

Nothing in the Youth Court Act changes in any way the rights and privileges of youthful defendants to release on bail, to a preliminary hearing, to trial by jury, to counsel, to publicity of trial, to appeal and to all other rights, privileges and immunities.

The Committee is highly in favor of many of the principles and procedures advocated in this Act. We are of the opinion however, that such a court should not be limited solely to young persons in our large cities. In chapter 8 above, there is set out the Committee's recommendations for a practical and progressive procedure for court dealing with the youthful offender both in New York City and up-state. This is done consistent with the conviction of this Committee that court treatment of juvenile delinquents and youthful offenders should be uniform throughout the entire State.

We do not wish to leave this subject without listing briefly certain important features which we have incorporated into the draft acts for a Youth Court submitted in Chapter 8:

1. creation of a special Youth Court Division of the Domestic Relations Court of New York City, and as a unit of the courts up-state;

2. limitation of the jurisdiction of these Youth Courts to ages sixteen, seventeen and eighteen;
3. requirement that places of detention and hearing in the cases of youthful offenders be separate and apart from those used for children or adults;
4. requirement that apprehended offenders in this age group must immediately be taken before the Youth Court;
5. initiation of a procedure whereby such a youth shall be brought before the Court initially on a petition that he is a "youthful offender"; that he shall not be prosecuted criminally until a full investigation has been had into the offense, as well as into his background and condition.

The English System of Borstal Institutions

This Committee was very favorably impressed with the idea of the Borstal System of institutional treatment and training of the offender sixteen to twenty-three, as it has developed in England over the past forty-five years. We were particularly struck with the fact that the conditions confronting the English Prison Commission of 1895 paralleled the conditions which disturb us today, i.e., that the sixteen to twenty-one year old offender contributes a disproportionately high share of the serious crimes; that a very large number of youths in this age group are annually committed to penal institutions; and, finally, that a large number of these committed offenders are released from correctional institutions little improved, if at all, by their period of training. There is a further parallel that these facts were brought to the attention of the Prison Commission and the public generally through the investigation of a Committee similar to ours in scope.

The Borstal System as it is known today—or as it functioned just prior to the outbreak of the war—was the final result of an experiment which has been continued over a period of almost half a century. The first beginnings of the system were in separate wings of the regular prisons. Successful results with this specialized treatment led, after a period of years, to the establishment of special institutions in no way connected with prisons for

adults. In light of the fact that the reformatory movement which started in this country in 1876 with the establishment of Elmira has advanced but little since that date, it is interesting to note that the Borstal System has not deviated from its original aim: to keep the young offender apart from the older, more experienced prison inmate. In Elmira, the age of commitment ranges from sixteen to thirty; most reformatories in this country receive offenders from age fifteen to thirty or thirty-five, while many so-called reformatories have no upper age limit.

Borstal training was originally established for offenders between the ages of sixteen to twenty-one, but in recent years as a result of experiments with offenders aged twenty-one and twenty-two, the upper age limit of Borstal training was advanced two years.

No judge may commit directly to a Borstal Institution. These institutions do not ordinarily receive first offenders; to be eligible for Borstal training the offender must have been previously convicted of a crime and must, in the court's opinion, be eligible for Borstal training by reason of his "criminal habits and tendencies or associations with persons of bad character." After the judge has decided upon Borstal training, but before he may commit the youth, he must invite the Prison Commissioners (who are responsible for the management and control of all Borstal and penal institutions in England and Wales) to make an investigation into the offender's suitability for Borstal training. As a result of this investigation, the Commission may or may not recommend commitment to Borstal, and the judge is, of course, not compelled to follow the recommendation. As a result of their experience with the judgment of the Prison Commission, however, the courts have come to rely on its opinion and in the very largest percentage of cases they follow its suggestions. This investigation is, of course, in addition to the pre-sentence investigation by the probation officer attached to the court.

Not every youth who is found guilty is committed to Borstal, by any means: some are placed on probation and some are given prison sentences. Nevertheless, it is interesting to note that Borstal receives almost one-half of all the offenders between the ages of sixteen and twenty-one who are sentenced to imprison-

ment and that they receive 97 per cent of all those in this age group sentenced to more than twelve months imprisonment. From this it will be seen that the courts have not only come to rely to a very large extent on Borstal, but that the Borstal institutions themselves are confronted with almost the entire body of youthful commitments, including the very serious cases for whom a term of imprisonment longer than a year is ordered by the court.

When the convicted offender is finally ready for sentence, the judge has no power to commit him directly to any one of the nine training units which comprise the system. His power of sentence is limited to "Borstal training". Beyond this point the Prison Commissioners have sole authority as to the institution or institutions in which the offender will serve his term. The minimum period of Borstal training is six months, the maximum three years. Parole extends for one year beyond the unserved portion of the maximum.

Even with the report of the probation officer before it and its own report, the Prison Commission does not allocate the offender directly to one of the nine training institutions without a further period of study.

Regardless of the court which commits him, the young offender is sent to London where he spends a period of not less than thirty days under observation in a special wing of the Wormwood Scrubs Prison. Here he is examined by a physician, receives a mental test from and has an interview with the psychologist, is visited by the psychiatrist and is under observation by the "governor" (warden) of the allocating center, the housemaster and the matron. During this time a more intensive study of his family, social and environmental background is made by the volunteer social workers attached to the center.

At the end of his month's period of observation, the offender is ready for allocation. The institution to which he will first be sent (he may later be transferred elsewhere) is determined by a board, composed of the governor, housemaster, and officers of the allocating center plus one or two governors of the open institutions who come in for the meeting. One member of the Prison Commission who is responsible for the Borstals serves as chair-

man. In their decisions, the board relies on all the studies and observations that have been made of the boy as well as their impressions of the boy who appears before them. The attitude of the board is that all of these young men will be released back into the community after a maximum period of thirty-six months of training and therefore, the selection of the training institution should be determined by the degree of the offender's likely response to conditions of limited freedom. They have at their disposal nine institutions ranging from maximum security to the most open type of farm colony and construction camp.

Of these, five are walled or partially enclosed and four are entirely open. It is interesting to note that the open institutions are almost all creations of the past decade, that they have received their inspiration from the example of our own prison camps and farms. They have, however, been carried to a point far beyond anything in this country for offenders in this age group.

Transfer among the various institutions is done very infrequently in recent years, as the number of treatment units has grown and as the allocating board has developed an ability to appraise the offender's background prior to allocation, so that he usually adjusts satisfactorily to the institution to which he is first committed. There is nevertheless a certain proportion of offenders who do not adjust to any of the institutions and some provision must be made for them. In addition, there are a certain number of chronic absconders who will escape from institutions of maximum security as well as from open camps. There is a further group of those who cannot be handled by ordinary disciplinary methods at the training institutions. For these three types—transfers, absconders and incorrigibles, (as well as for those whose parole has been revoked) the Prison Commission has set aside a special wing of the Boy's Prison at Wandsworth, near London. The average number of inmates here runs to about one hundred and they are handled under the conditions and regulations of the ordinary prison regime in which the principles of Borstal training are not regarded.

The open Borstals are four in number. They are alike in that they take those who may be expected to respond well to a varied

program under conditions of absolutely minimum security. Those who are allocated to these four institutions first make a pledge not to escape. The regime at the institution is described to them before they are sent there, and those who prefer a walled institution are given their choice.

This is the institutional setting in which the training process goes on. Several important principles are common to all of these institutions regardless of where they are situated, the type of boys selected for training there, and the particular program in which they may specialize.

The first of these principles is the selection of the men who will supervise these adolescents. While the staffs are drawn from a wide variety of sources and from all kinds of previous life experiences, their entrance into the Borstal service is carefully controlled by a Civil Service procedure. Recent years have seen increased emphasis on professional social work training, but even here men with good technical training who are without a broad experience of life would not be placed in positions of responsibility as housemasters. Many of the men in the Borstal housemaster service are not university trained; many of them are. But regardless of their educational attainments, they share one attribute in common: maturity and breadth of viewpoint coupled with an interest in adolescents and an ability to lead them.

Possibilities of advancement within the Borstal service are many. Four of the nine present Prison Commissioners saw service as governors and housemasters within the Borstal service. All of the nine Borstal governors began their service as housemasters. The ascending ranks—assistant housemaster, housemaster, deputy governor, governor and prison commissioner—allow the Borstal administrators to select their superior officers from men who have earned their laurels by direct service.

The chief responsibility of the housemaster is in the field of individual guidance, the spirit of which is personal relationships and personal influences. Psychiatric social training is by no means developed in England to the point which it has attained in this country. But the thing which these professionals emphasize—in their training, in their literature and in their conferences—are

the things which Borstal has been putting into practice for many years. When a boy is received at the institution, the housemaster to whom he is assigned, receives a copy of all the data in the possession of the court when it committed him and of the Prison Commission when it allocated him. From this point on, the record bears notations of the continuous observations not only of the housemaster, but of all the other staff members who have any contact with the boy—the governor, physician, chaplain, matron and instructor. The boy who is committed to the care of the housemaster is, therefore, not an unknown quantity at the outset. Furthermore, case-loads run from fifteen to fifty boys, never more. This process of reconstruction is based on sound psychological principles, the purpose of which is to build up new emotional attitudes of confidence, respect and a desire to follow exemplary leadership.

The work of the housemaster is divorced from the purely custodial aspects of the institution, and while he may be responsible for a particular program activity, he is by no means a turnkey. Frequently he lives in the same dormitory or section of the house with his boys, eats with them, joins in their work, shares their recreational programs, accompanies them on hikes and trips and, in general, is expected to act as a combination friend, advisor and confessor. Ample opportunity is allowed him for individual interviews with his boys and many ingenious arrangements have been devised to make possible these interviews without embarrassing the boy before his fellows. By observing the boy under all kinds of conditions, by sharing in his programs, a relationship is brought about which allows an opportunity for complete understanding.

Governors of these institutions, because of their previous experience as housemasters, are intimately acquainted with the technique of what we would call case work and are, in effect, case supervisors. While there is no full-time psychiatrist attached to any of these institutions and while it is entirely likely that resort to such psychiatric assistance would make Borstal a more effective training method, it nevertheless remains true that these institutions attain a higher degree of fundamental rehabilitation

with a larger percentage of their inmates than is accomplished in our own reformatories where psychiatrists are formal members of the staff.

The next most important feature of Borstal training is the arduous program with which the average youth is occupied for a full fifteen or sixteen hour day. In each of these units there is in operation a program of work, physical training, education and recreation which makes the regime of our own reformatory institutions seem very soft by comparison. Cells are occupied only for sleeping; the little free time is spent in association under supervision, and not in the solitary brooding conducive to fantasy and self-pity.

The day's activities are numerous, varied, and so adapted to individual needs and interests, as to challenge rather than depress. A full one-half of the waking hours are spent at work; maintenance occupies the briefest possible time of the smallest possible number of boys, except where it has definite training value. While trade training not tied to a production schedule was increasing in the Borstal institutions within recent years, nevertheless a very high rate of productivity is turned out by Borstal labor. All of it goes for state use either in other institutions under control of the Prison Commission, or in other government departments. The trade party to which the boy is admitted is selected on the basis of his previous work experience and his plans after release. Wages are paid throughout the entire system.

Sports programs are very highly developed at all of the institutions; boys are admitted to all of the educational, avocational and recreational activities not as privileges but as part of their training process. They are encouraged to develop whatever cultural, art or craft abilities they may possess. As a result of this driving program of activity, one seldom sees boys hanging around idly or going through the paces of dull drudgery so typical of our reformatories. While he is in the institution, the Borstal lad is not cut off from the world to which he is training to return. Regulations regarding visits, and letters do not bind a boy who has progressed well and who has earned additional privileges. Some boys who make especially good progress may be allowed

once during their term of institutional training to make a home visit, after the home has been investigated by the parole organization. Every Sunday afternoon the population of all the Bors-tals goes out on a "route march" or hike away from the institution. This applies even to institutions of maximum security. Within the institution the Borstal youth sees the wives, children and pets of the staff; automobiles and trades people come and go freely, there is the general atmosphere and feeling that the institutions are not insulated stations without relationship to the world beyond their gates. Once during the summer some Borstal boys are allowed to camp out with a group of their fellows under the supervision of a housemaster. They work during the morning to repay the owner of the camp site, but afternoons and evenings are free for a wide variety of recreational activities. Boys from some of the open institutions are allowed to go without escorts or proctors into the town or village during certain hours after work—Saturday afternoons, for example—and at least two institutions make provision for the attendance of their boys at extension courses in the neighboring community.

This relationship with the community is a reciprocal one; not only do these boys have some contact with the world about them, but volunteer representatives from the community also come in to teach special skills and hobbies. At North Sea Borstal, at least eight local people in the neighboring town of Boston volunteer their services in such widely assorted skills as baking, cabinet making, square dancing, painting, hiking and sailing. At still another Borstal a special room is reserved for families visiting the institution who may wish to share the institution meal with their son or brother.

Over and above all is a degree of flexibility and individuality allowed the Borstal staff in their management of the institutional programs. This has attracted to the institutions a type of personnel which would not last long nor be interested in a regime which was all routine and precedent. Many suggestions regarding the development of Borstal training have grown out of annual conferences of governors and housemasters, which are also attended by the parole officers. There is thus seen to be not only

a wide degree of latitude permitted in the administration of these institutions, but also an integration and inter-relationship between institution and parole which is largely unknown in our reformatory systems.

Suggestions for the release of a boy from the institution are first received at the monthly staff meeting of his house or section. The institutional board, made up of the governor and his deputy, the housemasters and their assistants, physician, chaplain and principal officer, meets to act on these suggestions for discharge, which are then formally passed on by the visiting committee of the institution. No Borstal boy needs to wait until a job has been found for him on the outside before he is released. The institution is careful to watch the point at which he has received the optimum benefit of institutional training, when he is ready to be returned to the community.

Supervision of parole is in the hands of a semi-public organization known as the Borstal Association which was set up less than ten years after the Borstal experiment began. The largest part of its budget is derived from the government, the balance is contributed by the general public. The headquarters of the Association are in London with two branch offices in Liverpool and Manchester. In these cities, parole officers—known as Borstal Associates—render supervision very much like that of parole officers in this country. In other districts of England and Wales, the Borstal Associate may be a probation officer or other volunteer person who has an interest in youth. In addition to the official Borstal Associate, whether a staff member or lay person, the Borstal Association has developed a type of Big Brother service further to assist the Borstal parolee to adjust back to the community. Known as a Voluntary Borstal Associate, this person supplements the work of the official Borstal Associate by helping to find jobs, by affiliating the parolee with a social or recreational agency, by serving as a friend and advisor.

A Borstal Associate also visits the boy at the institution when he is about one-half through his period of training and again three months before he is to be released. Shortly before discharge, he is given a suit of civilian clothing by the Borstal Asso-

ciate and on the date of his release he is taken to the headquarters of the Association in London where the terms of his parole are explained to him, he is given the name of his Associate and is then sent home. Boys who are homeless or who have no fit home to return to are placed by the Association in temporary boarding homes under its supervision. Boys who are out of work are seen once a day until they find jobs. In London, at least, every parolee is seen twice a month. The Deputy Director of the Association is in charge of the greater London area and he makes a weekly review of all the cases in his district in order to make sure that the steps which should have been taken during the week in each case have been given attention.

In peace times, the Army or Navy will accept a boy after he has done well on parole for a year or longer. No boy who drops from sight who is found to be working may be apprehended by the police or otherwise returned. Release from parole is an automatic process, but any revocation of parole during the period may be done only by the Prison Commission on the recommendation of the Borstal Association. Through an arrangement with the police which has been in existence for almost thirty years, any Borstal parolee or ex-parolee who finds himself stranded or without funds may go to the police and explain his situation. The police communicate with the Borstal Association for directions.

Not only does the Borstal Parole Officer make visits to boys at the institution before they are released, but the housemasters, as well, are given three or four days a year on pay to allow them to come into the Association office and go over the records of their old boys and also to visit some of them at their homes. This is another example of the relationship between institution and parole which provides a continuing interest in the offender.

This review has touched only some of the highlights of the Borstal System. For our purpose certain of its principles are indeed of value. The first of these is the fact that judges are deprived of the power to commit directly to the institution. They are likewise restricted in the term of institutional training to which they may commit. From the moment of commitment, the Prison Commission which has charge of the administration of the insti-

tution also has charge of observation and allocation. At the institution, the boy finds an expert and non-politically selected personnel, people who are acquainted with his background, who are interested in him and anxious to help. The work which he does here is given meaning by reason of the close relationship it bears to the work he will do when he is released. He has little time for idle gossip or for boredom. If he applies himself, he will find when he leaves the institution that he has learned a trade and also developed other interests and aptitudes. Intelligent, wholesome, understanding relationships between leader and boy, together with a program of rigorous training have prepared him again to take his place in the community. These are the basic foundations for true rehabilitation.

CHAPTER **XIII.** CONCLUSION

In submitting this report, the Committee feels that it has adequately discharged its responsibility and has given ample consideration to the various matters for which it was created and extended. This fifth report of the Committee, is, therefore, its final report.

The Committee realizes that the legislative proposals and other recommendations which it has made to the Legislature are neither drastic nor revolutionary—precedents have been described for each of these measures. Our hope is, with the incorporation of these recommendations into the laws of the State and into the practice of existing agencies and institutions, that the young people of New York State will receive, as a result, a higher degree of care and protection and that the persons and property of this State will, at the same time, be more fully safeguarded. The Committee believes that these suggested measures should receive the full and prompt endorsement of the Legislature, and that they should now be enacted into law. They arise quite naturally out of the body of law and procedure relating to children and youths which has been developing in this State over the past forty years and they represent a crystallization of recent progressive experiments as well.

It is the Committee's earnest hope that out of the experience of the Youth Court suggested for New York City and out of the Youth Court procedure recommended for up-state counties that a wealth of experience will be gathered which will form the

basis—perhaps within a few years—for a complete and state-wide system of Youth Courts.

The Committee feels, finally, that it cannot leave the subject of the delinquent juvenile and the adolescent offender without a word about the institutions to which these young people are committed by our courts. Court procedure is not an end in and of itself. The fact that the court's knowledge of or interest in a case committed to an institution may cease at the moment sentence is imposed, does not mean that the problem thereafter automatically ceases to exist. The purpose of court action is to determine the treatment necessary to correct the tendencies and conditions of the young offender. How this shall be done is the responsibility of the institutions which the State and private individuals have established.

The Committee is further aware of the fact that the advanced procedure of the children's courts has had a progressive influence on the institutions to which they commit juveniles. It is to be expected, with the creation of Youth Courts, that a similarly progressive influence upon correctional and reform institutions will also be exercised by these latter courts.

Throughout its inquiries the Committee has been reminded not only by witnesses who have appeared before it but by its own observations as well, that the most efficient and socialized court procedure is not sufficient in and of itself to guarantee the rehabilitation of the young offender who may require a term of training away from home before he is ready to return to his community. Although we believe that we have fully discharged our responsibility in relation to the court aspect of this problem, we are by no means convinced that the subject should therefore be completely closed.

There are at the present time seven public and thirteen private institutions to which the court of the State may commit persons under twenty-one who are adjudged delinquent or who are found guilty. Only one of these, the State Vocational Institute at West Coxsackie, is limited to the age group of the youthful offenders who will come before the Youth Courts suggested by the draft acts which we have submitted. Outside of this institution no other

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specialized facilities are available for the treatment of the youthful offender, either on the basis of their physical structure or by virtue of the training programs which they now conduct. The City and State reform institutions which now care for offenders between sixteen and twenty-one were originally designed for the custody and control of those who had gone through the traditional criminal court procedure and who were found guilty as misdemeanants or felons. The Committee believes that to mix the youthful offender who will be committed by the Youth Courts established by the acts which we have submitted with this group would result in vitiating the underlying purpose of the new concept which we have introduced.

Public institutional facilities now available for delinquents up to the age of sixteen, while they may perhaps be suitable structurally and in their treatment programs for some portion of the sixteen, seventeen and eighteen year old group, nevertheless should not, as a general procedure, be used for this older group. The possibility of harm for the younger group as a result of such commingling is obvious. Some private institutions for delinquents committed by the children's court might possibly admit a selected number of youths sixteen, seventeen and eighteen, where their charters are sufficiently flexible. This should not be encouraged on a large scale because of the same harmful effects of mixing children with older adolescents. These private institutions, furthermore, are not adequate to care for more than a very small proportion of those who will be committed by the Youth Courts.

It is the Committee's belief, therefore, that special institutional facilities are required for the youthful offender. These should house neither youths found guilty of a crime in the criminal courts nor children committed as juvenile delinquents.

The Committee has been informed of various schemes in operation in other jurisdictions. A section of the preceding chapter (pp. 294-304) describes in some detail the English Borstal System of institutions for the older adolescent offender. The basic principles of these schools, especially the small units, the variety of treatment methods and the high standards of personnel

commend the Borstal method to the attention of every interested person in this field. The system of forestry camps in California is but one example of the interesting experiments along institutional lines now being conducted in our own country. There is evident a general dissatisfaction with the present institutional facilities and treatment programs for juvenile delinquents and adolescent offenders. Recent studies by the Children's Bureau and the Osborne Association highlight once more our failure to bring our institutional methods and standards into line with the enlightened and non-criminal procedure of our children's courts.

Almost fifty years ago, an article entitled "Juvenile Delinquency and the Failure in Present Reformatory Methods" cited the inadequacy of traditional punitive methods of institutional treatment of juveniles and proposed, ". . . a classification based upon character, with a more perfect individualization, involving careful physical and mental examinations. To the life of the reformatory must be added further developments of the conditions existing in the home and in society . . ." (E. V. Stoddard, 31st Annual Report of the New York State Board of Charities, 1897, pp. 593-607). This same student of the problem noted that the methods commonly followed by the industrial and training schools of that period were deterrent in character and based largely upon repressive and punitive methods, that the institutional regime depended too largely upon its power of intimidation and did not tend, therefore, to develop the potential characteristics of its young charges or to prepare them properly for their return to their communities.

Many of these criticisms are still valid today. In addition, there will be further problems created by reason of the establishment of the Youth Courts which this report recommends.

The Committee believes, therefore, that while its function has been fulfilled through the five years of study which it has devoted to the problem of court procedure for juveniles and adolescents, a further field of inquiry has been opened up by this same study, namely, the necessity for an examination into the public and private institutions to which our courts now commit minors. We believe that the public interest aroused by the studies which we

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have made during the life-time of this Committee should not be permitted to flag. Court procedure is but one step in the entire process of dealing with the young offender. The efficacy and the wisdom of the judgments rendered by these courts must be tested by this final question: How effectively do our institutions treat the material entrusted to them by the courts?

The Committee believes that an examination should be made into present facilities and present methods for dealing with the young people committed to institutions by our courts. We believe that some attempt should be made to discover if our institutions are adequately meeting this challenge. We believe that other procedures in other places should be studied with the view to discovering more effective methods, if they are in existence anywhere.

To this end, the Committee recommends to the attention of the Legislature this final recommendation, that an inquiry by a joint legislative committee of the Senate and Assembly be directed into the problem of institutional treatment of young people committed by the courts of New York State.

Fred A. Young, CHAIRMAN

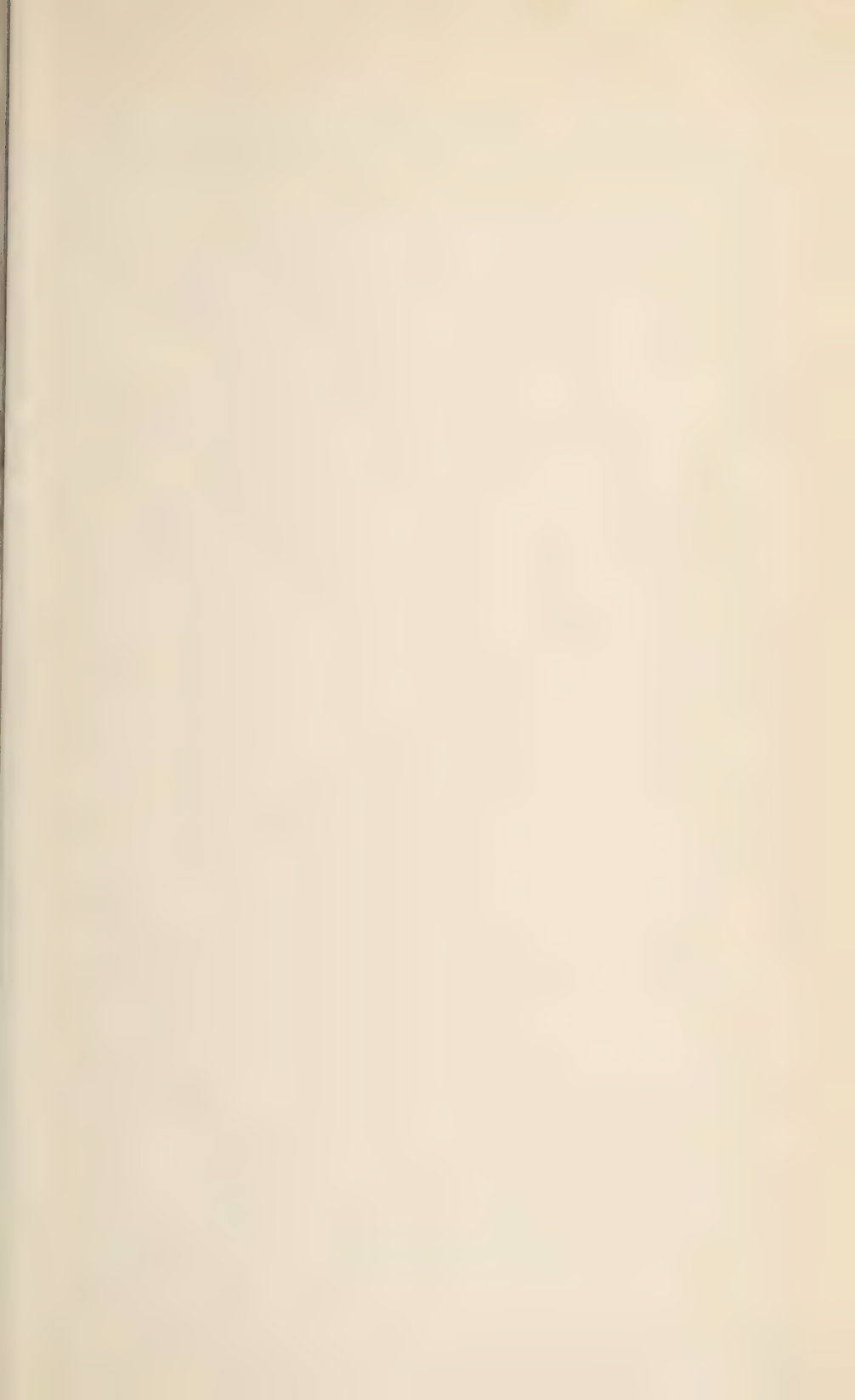
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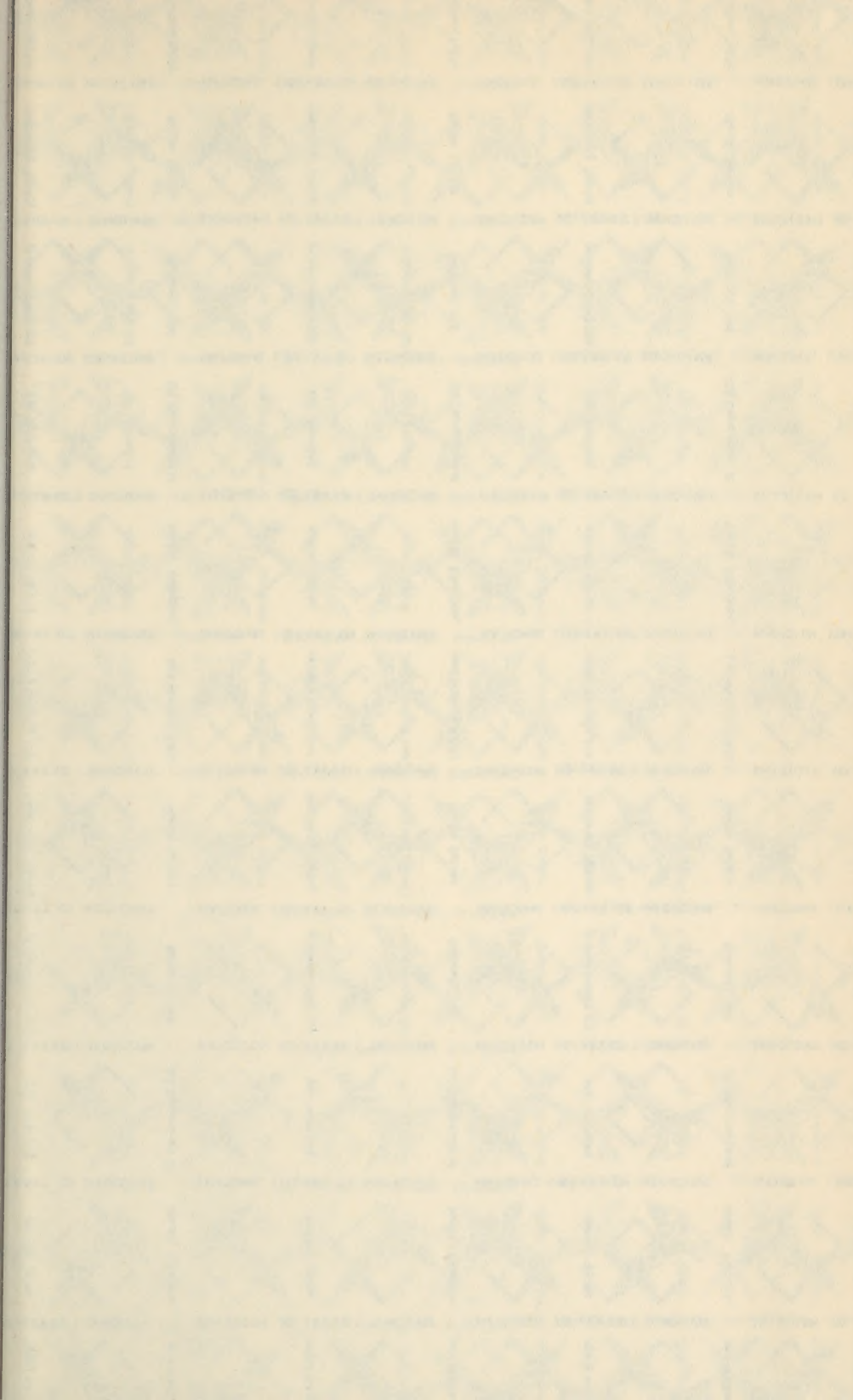
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